

The Privatization Age? Which Services are Privatized and Why

By

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B.A., Biology, The Hebrew University, 1994

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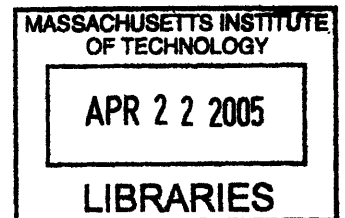
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ABSTRACT

This dissertation examines the determinants of the extent of privatization of service delivery. Despite the fact that right-wing governments extolling neo-liberal policies have placed privatization at the top of the policy agenda in recent years, there are some services that have experienced very little privatization, if at all. The aim of this dissertation is to explain the considerable variation in privatization experiences across service programs in different policy domains, political systems and over time. The research is based on a qualitative analysis of privatization of service delivery, while funding remains public, in three policy domains – education K-12, mental health care, and incarceration – across three different political systems – Massachusetts, Texas and England.

The comparison of the nine case studies revealed significant differences in the extent of privatization across the three policy domains. Privatization rates in education were considerably lower than in the two other domains, while privatization rates in mental healthcare were higher. Despite considerable differences in institutional structure and the balance of right-left power, the differences in privatization rates across political systems did not follow any clear pattern. The explanation for the difference across policy domains primarily focus on institutional factors. Programs in policy domains with many stakeholders are less likely to be privatized than programs that are smaller by comparison. Also, programs that are institutionally stable are more difficult to privatize than programs that are undergoing radical institutional restructuring for reasons unrelated to privatization. Finally, the dissertation discusses privatization dynamics in a single program over time. The main conclusion of this analysis is that the private sector tends to increase its political involvement after initial privatization has been accomplished, thus potentially bringing about an acceleration of the privatization process.

Thesis Supervisor: Joshua Cohen

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Writing a dissertation in the social sciences is very much like a journey without maps. When you begin the journey, you have only a vague notion of where you would like to go and no idea at all about how to get there. Luckily, I did not embark alone on this journey. I would have not made it to my destination without the guidance, help and friendship of the following people.

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List of acronyms used in the text

AARP: American Association of Retired Persons

ACLU: American Civil Liberties Union

AFSCME: The American Federation of State, County, and Municipal Employees

BHO: Behavioral Health Organization

BMA: British Medical Association

CCA: Corrections Corporation of America

DMH: Department of Mental Health

LEA: Local Education Authority

MHMRC: Mental Health and Mental Retardation Centers

NAMI: National Alliance for the Mentally Ill

NHS: National Health Service

PFI: Private Finance Initiative

POA: Prison Officer's Association

PRT: Power Resource Theory

RFP: Request For Proposals

SBOE: State Board Of Education

SEIU: Service Employees International Union

SERPS: State Earning-Related Pension Scheme

TDCJ: Texas Department of Criminal Justice

TSEU: Texas State Employees Union

TUC: Trade Union Congress

TXDMHMR: Texas Department of Mental Health and Mental Retardation

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Introduction

On September 3, 1987, President Ronald Reagan announced his intention to establish a President's Commission on Privatization. In his public statement, Reagan extolled the virtues of privatization:

“There are many activities that are not the proper function of the Federal Government and that should simply be left to the private sector. The American people know that in many cases the Government is less efficient than private enterprise in providing certain services. Government agencies do not have the same incentives and interests that allow the private market to provide goods and services more efficiently and effectively. Privatization programs have the potential for bringing enormous benefits to all members of society. Workers can be given part ownership in the newly created private company and often receive a pay raise. The public receives better services. Managers are free to respond to the proper incentives to build a successful business, and competition in the free market allows others to share in the prosperity.

(...) Based on its findings, the Commission will propose how we can return appropriate Federal activities to the private sector through the sale of government operations and assets, the use of private enterprise to provide services for government agencies, or the use of vouchers to provide services to the public through the private sector. It will recommend legislative and administrative action that can be taken to accomplish the privatization initiatives. In the meantime, my administration will continue to vigorously pursue our current privatization initiatives. It is my hope that my Commission on Privatization can take politics out of the privatization effort and propose a national policy (...).”¹

President Reagan articulated a view that was quite exceptional in the 1970s, but by the end of the 1980s and 1990s was conventional: the private sector was superior to the public sector in its performance, so it made sense to transfer as many functions as possible from the public to the private sector. Reagan was not alone among Western leaders in endorsing a privatization policy. His closest international political ally, Britain's Prime Minister Margaret Thatcher, was a true privatization trailblazer. Her

¹ Ronald Reagan, “Statement on the President's Commission on Privatization,” 3 September 1987, <http://www.reagan.utexas.edu/resource/speeches/1987/090387a.htm>, accessed 2 December, 2004.

privatization initiatives targeted primarily nationalized industries, but also numerous publicly funded services. Other countries, especially Commonwealth countries, emulated Britain's privatization.²

Privatization became one of the main pillars of neo-liberal ideology – an ideology endorsed by several of the world's most powerful leaders. It limited the size of the state – a central goal of neo-liberals – but the policy's appeal did not end there. Privatization of state services was widely regarded as a response to the perceived failure of the welfare state. Obviously, the economic slowdown in developed countries during the 1970s had a negative effect on welfare states. Needs and demands were steadily increasing as welfare state budgets were stagnating. Given the growing mismatch between resources and demands, there was a growing pressure on the welfare state to become more efficient in its use of scarce resources.

Criticisms of the welfare state, however, went much further than pointing out that as it stood, the welfare state could not keep up with demand. Some critics argued that the problem was that the welfare state structure encouraged citizens to make demands on the state.³ Critics on the right of the political map argued that the welfare state was self-defeating because it perpetuated the problems it set out to solve by creating a culture of dependency in society. Those who relied on state welfare, according to this argument,

² Oliver Letwin, *Privatising the World: A Study of International Privatisation in Theory and Practice*, (London: Cassell, 1988).

³ Samuel H. Beer, *Britain Against Itself: The Political Contradictions of Collectivism*, (New York: W.W. Norton & Company, 1982): 30-33.

lost either the ability or the will to fend for themselves.⁴ Some commentators on the left also noted that the welfare state had failed to eradicate poverty and did not provide adequate services to the lower classes, although their analysis of the reasons for this failure was very different from that of their counterparts on the right.⁵ These very different reasons for discontent converged into a widespread dissatisfaction with the welfare state: dissatisfaction that motivated policymakers to restructure the welfare state. Alternatively, in the words of President Bill Clinton: “To end welfare as we know it”.

Neo-liberals, sure enough, proposed privatization as the appropriate response to welfare state failure. What was more surprising was the willingness of certain elements on the left to use privatization to promote their social goals. While the adoption of privatization policies by leaders such as Bill Clinton and Tony Blair might be construed as an abandonment of the left’s commitment to the welfare state for the sake of regaining political power, there is also a less cynical way of viewing this development. A number of intellectuals on the left have recognized the advantage of markets and private ownership over public ownership in promoting choice, efficiency and innovation. Some suggested that the way to take advantage of private sector merits without having to forsake egalitarian values was to keep service funding public, but to create a market of public and private service providers.⁶ The rise of communitarianism on the left provided an additional impetus for supporting such a scheme in which delivery would be

⁴ Charles Murray, *Losing Ground: American Social Policy, 1950-1980*, (New York: Basic Books, 1984); Myron Magnet, *The Dream and the Nightmare: The Sixties’ Legacy to the Underclass*, (San Francisco: Encounter Books, 2000).

⁵ Ramesh Mishra, *The Welfare State in Crisis: Social Thought and Social Change*, (New York: St. Martin’s Press, 1984): 22-24.

⁶ Julian Le Grand and Saul Estrin (eds.), *Market Socialism* (Oxford: Clarendon Press, 1989).

privatized, but funding would remain public. A retreat of the state from providing services, according to some thinkers, would allow for greater involvement of civil society in the delivery of services.⁷

Aside from the rise of the neo-liberal right and the welfare state crisis, privatization was buoyed by support from international organizations. The World Bank has drafted a Private Sector Development Strategy that aims to increase private sector growth in developing economies.⁸ The Strategy calls for increased use of the private sector in the delivery of services to the poor. The International Monetary Fund has made loans to developing countries conditional on privatization and the downsizing of the public sector.⁹ The international pressure to privatize is not limited to developing countries. The Organization for Economic Co-operation and Development (OECD) has extolled the virtues of privatization, and anticipated World Trade Organization' agreements create new incentives for privatization of services among developed countries.¹⁰

For many, privatization appears to be an irrepressible force, whether for good or bad. The perceived failure of traditional public sector provision, the ascendance of neo-liberal ideology and the combined push of both domestic and international forces to privatize,

⁷ Anthony Giddens, *The Third Way: The Renewal of Social Democracy*, (Cambridge: Polity Press, 1998): 111-118.

⁸ World Bank, "Private Sector Development Strategy: Directions from the World Bank Group." 9 April, 2002.

⁹ Vincent Lloyd and Robert Weissman, "How International Monetary Fund and World Bank Policies Undermine Labor Power and Rights," *International Journal of Health Services*, Vol. 32, 3 (2002): 433-442.

¹⁰ OECD, "Privatisation of Utilities and Infrastructure: Methods and Constraints," OECD Proceedings, 1997; Recent attempts at privatizing elements of British healthcare, for example, may have been motivated by the government's wish to place English private healthcare companies in a favorable starting position, in terms of international competition, once health services are opened up to global commercial competition by anticipated revisions in the General Agreement on Trade in Services (see Allyson M. Pollock, *NHS plc: The Privatisation of Health Care*, (London: Versco, 2004): 60-62.

seem to imply that privatization has become, or will soon become, an all-encompassing phenomenon. If one looks, for example, at the long list of privatized industries and services in Britain – British Telecom, Gas, street cleaning, Council housing, and so on – this view seems affirmed. However, it is striking that in some fields privatization has made hardly any headway at all. For example, the number of publicly funded students who attend private schools in England, has hardly grown during the last twenty five years; plans to privatize the United States Postal Service have been proposed numerous times over the last two decades, yet always rejected; and American Social Security is still very much a public program as well. While it is true that privatization has transformed some fields, in others it has hardly made a dent at all.

The question

Why is it that despite the powerful forces pushing toward privatization, there has been so little privatization in some government programs? This dissertation sets out to answer this question with respect to a specific type of privatization: privatization of the delivery of publicly funded social services. To reformulate, the general question motivating this study is:

What determines the incidence and extent of privatization of delivery in social services?

What explains the considerable variation in privatization trajectories across different service programs?

As it stands, the question requires some elaboration and clarification. Specifically, it is necessary to clarify what is meant by the term ‘social services’ and explain the reason for the focus on privatization of service delivery. By ‘social services’ I refer to services that

- a) involve direct interaction, at some point, between the provider and the recipient, and
- b) are closely associated with issues of equity and/or justice. This definition is more inclusive than the common usage of the term ‘social services’ that excludes such services as education and healthcare. Both these services are social services according to my definition of the term, because they involve direct interaction between provider and recipient and the proper distribution of these services among recipients is commonly considered an issue of social justice. Incarceration is a different example of a field that under the common usage does not belong in the category of social services, but does under my definition.¹¹ Municipal services, in contrast, such as street cleaning or refuse collection, do not belong in the category of social services because neither are they personal services, nor are they commonly associated with issues of justice.

Why have I chosen to concentrate on the delivery of such services? The main reason is that the dynamic of the privatization process of social services is likely to be very different from that of other types of privatization, so conflating different types of privatization would muddle our understanding of privatization, instead of sharpening it. The best way of clarifying this point is by directly contrasting privatization of social service delivery with privatization of utilities, municipal services and transfers.

¹¹ In the case of incarceration, the service is associated with issues of retributive justice. Indirectly, some commentators also link it to questions of social justice.

First, the privatization of utilities, in contrast to social service privatization, tends to be a one shot affair. There is no contract that comes up for discussion every few years, as is usually the case with services. Politicians, therefore, might be less hesitant about the privatization of a utility, because once the deed is done opposition will have to come to terms with the fact. Furthermore, the sale of utilities involves an incentive that does not exist in the privatization of social services: governments receive a monetary windfall from the sale.

Second, municipal services differ from social services in at least two important ways.¹²

First, social services come with a sense of entitlement that does not apply, to the same extent, to municipal services. One implication of this is that struggles over municipal service privatization would be less intense than struggles over social services, because they do not involve social rights. Second, municipal services tend to be indivisible – you cannot clean the street for only one person – so the fear that private delivery would affect the equity of distribution is less serious.

Finally, the privatization of transfers, such as social security, differs from social service privatization in two ways. First, in social services, there are public workers who provide the service and these workers are strongly affected by privatization. Often, public workers constitute the core of the opposition to privatization. One might expect the dynamics of privatization in transfer programs, which hardly involve any public workers, to be different. Second, the privatization of a social service is a very visible act. Service

¹² There is no necessary reason why the set of services I refer to as municipal services – public maintenance works – would primarily be delivered by municipalities. Nevertheless, these services are commonly subsumed under this heading, so to avoid confusion I have retained the common term.

location, personnel and delivery methods all tend to change in the transition from public to private delivery. The privatization of a transfer program is less evident. Recipients are often unable to understand the difference between government administration of their benefits and private administration. Through a variety of methods, the government could also obscure privatization of funding in transfers. These two factors make privatization in transfers easier to accomplish than privatization in social services.

Because of these differences, it was important that the study concentrate on one type of privatization. The choice of privatization of delivery, while service funding remains public, was motivated, first and foremost, by an interest in the welfare state. The welfare state is undergoing a period of restructuring. The form and extent of this restructuring is bound to affect us all. An analysis of the dynamics of privatization of delivery will help us better understand welfare state restructuring.

The argument in brief

President Reagan, in the opening quotation, hoped that politics could be removed from privatization. The history of privatization, including Reagan's own privatization initiatives, belies any such hope. Privatization changes the existing boundary between public and private. Shifting delivery responsibilities from the public to the private sector creates winners and losers. The prospective winners will support privatization, while the losers will do their best to block it. Privatization is, however, not just an interest-based struggle: it is also an ideological struggle. Neo-liberals, as mentioned before, are ardent

proponents of privatization. Many on the left, conversely, see privatization as a direct assault on hard-won social rights and entitlements. Hence, the privatization process will be, almost unavoidably, a politically loaded process. My analysis, therefore, concentrates on the political struggle around the privatization process.

In my analysis, I break down privatization into three separate stages. In the first stage, privatization entrepreneurs formulate the idea to privatize a specific service and present it to policymakers. In recent years, policymakers of all stripes have become very familiar with the concept of privatization. Hence, whether privatization is formulated as a policy option or not, can no longer explain variation in privatization patterns. Privatization ideas are well known by now in all programs.

In the second stage of privatization, policymakers, politicians and bureaucrats, attempt to pass privatization legislation and/or implement a privatization policy. Whether they succeed or not largely depends on two factors – both related to the existence and strength of opposition. First, large domains with many stakeholders are more difficult to privatize than small policy domains. The number of stakeholders – understood to be individuals and organizations that have an intense interest in program policies¹³ – in a given service domain largely determines its political importance. Politicians are, therefore, more cautious in implementing privatization policy in large domains, because of the political danger of alienating a large constituency. Obviously, not all stakeholders oppose privatization. Politicians, however, face uncertainty regarding the possible stakeholder response to privatization, leading many of them to ‘play it safe’ and not privatize.

¹³ In chapter 4, I offer a more comprehensive definition of stakeholders.

Second, domains that are undergoing extensive institutional restructuring, for reasons other than privatization, are more likely to experience privatization than service domains that are institutionally stable. Institutional instability creates a window of opportunity for privatization-seeking policymakers by obfuscating privatization, and by forcing potential opposition to compromise and divert resources to other struggles.

Privatization of delivery, then, is determined primarily by policy domain-specific attributes. The main implication of this conclusion is that there is a general similarity in privatization dynamics among similar policy programs in different political systems. This finding is surprising. Major political system-related variables – the institutional structure of a political system, its political culture, or legal system – fail to have a decisive differential impact on privatization. I also find no significant connection between left power and the extent of privatization. This factor does have some effect on the content of privatization, but none is discernable on prospects for its implementation. This finding is quite startling given the clear connection, described at the beginning of the chapter, between neo-liberal philosophy and privatization.

The domain size- related factors interact with several other factors that affect the trajectory of privatization in numerous ways. First, motivations for promoting privatization vary with domain size. Cost containment is a far more prevalent driving force for privatization in small domains than in large ones. Second, privatization in large domains is much more likely to occur during a budget expansion than during a budgetary

contraction. Third, policymakers apply methods of policy obfuscation far more to privatization in large than in small domains.

During the third policy stage, new private providers are already involved in the delivery of publicly funded services, and prior privatization affects current privatization policy through a policy feedback loop. I explore the effects of formal policy evaluations and media coverage within these loops and find that they have an occasional impact on privatization. The consequences of prior privatization also affect future privatization in the way they influence the identity, relative power, strategies and even perceptions of different stakeholders. The study of privatization feedback loops is somewhat constrained by the relatively short timeframe of the different privatization experiences.

The pattern of privatization of delivery is very much a product of welfare state politics. Understanding the patterns of privatization politics requires us to go beyond simple principles such as “neo-liberals in power means more privatization” or “public program failure leads to privatization”. We must understand the interaction of policymakers, stakeholders, economic conditions and institutional factors, and how all of these evolve over time, in order to arrive at a satisfactory theory of privatization.

Methodology

In the early stage of research, I realized that a study of privatization of delivery faces two important constraints. First, there is a serious problem of data availability. There is a

tendency among privatization researchers to use the same case studies and even analyze the very same data sets. This is quite understandable. It reflects the dearth of reliable privatization figures in many programs. The concentration on cases in which data is readily available, however, comes at a price. These are not necessarily the best cases, or the best data, on which to base generalizable conclusions. Privatization of mental health services, for instance, started long before most other privatizations, making it a good case study for exploring privatization dynamics. The relative lack of hard data in the field regarding privatization rates, however, has made mental health privatization an unattractive object for quantitative studies. Second, answering the question of what determines the extent of privatization seems to require weighing of policymakers' motivations. The problem is that in order to do this one has to estimate, somehow, the credibility of policymakers' stated motivations with respect to the privatization decision.

The latter problem, the difficulty of ascertaining authentic motivations, has led me to concentrate my research on more tangible and verifiable factors related to privatization, as many quantitative studies do. Nevertheless, due to the central problem of data availability, I have decided to pursue a qualitative study in which data availability would be less of an issue.

This study is qualitative and comparative in structure. In order to create the basis for generalizations, I have employed a comparative framework. In investigating the different case studies, I set out to reconstruct a narrative of how privatization came about or was blocked, who were the actors involved, and what factors influenced the process. To piece

together a coherent story, it was necessary to use different sources of information. I made use of three different general sources.

First, I made use of the existing academic and non-academic literature written about public policy developments, in general, and privatization, in particular, in my chosen case studies. In some cases, there was already research that specifically explored privatization from various perspectives, in a specific program. Most studies, however, addressed privatization as a side issue, if at all.

Second, the use of secondary sources cannot substitute for a thorough survey of primary sources, especially in the case of such a recent phenomenon as privatization. Because privatization is a decision made by a public authority, there usually was a paper trail to follow, which could be found in: executive statements, orders and reports; reports of governor appointed commissions; legislative reports; audio and video tapes of legislative hearings and debates; legislation; minutes of public board meetings (e.g., State Board of Education), internal agency memos; and the list goes on.

I also took advantage of various non-governmental sources. First, media coverage (mostly newspapers) is both an important source of information and a potentially important independent variable in its own right. The media survey made extensive use of the Lexis Nexis databank and, in some cases, of specific newspaper electronic and non-electronic archives. For some policy programs, it was not difficult to read all media reports regarding privatization and private delivery. In others, such a search retrieved

thousands of items and it was necessary to be more selective. In such cases, I concentrated the media survey on some key events. For those events, I relied on media reportage from different sources, not just to verify the facts of the matter, but also to assess the general tone – negative, neutral or positive – of media coverage. Second, I reviewed a broad array of non-governmental documents from advocacy groups, think tanks, unions, private organizations, churches, and private individuals. These documents were especially helpful in clarifying where different stakeholders stood on the issue of privatization and how they communicated their views to policymakers. Furthermore, in the absence of official figures, non-governmental documents were sometimes the only source of privatization-related data.

Finally, and most importantly, I conducted interviews with individuals who were involved in the privatization process in each of my case studies. Over all, I conducted 144 interviews (Appendix A includes a full list of interviewees). The interviews were an invaluable source of information in two important ways. First, I interviewed a broad spectrum of actors involved in privatization. Among my interviewees, there were: politicians from both parties (executive and legislature); bureaucrats and service practitioners; union officials; executives from private provider organizations and associations (for-profit, nonprofit and faith-based); advocacy group officials; and policy experts from academia and think tanks. By canvassing such a broad array of actors, I was able to hear very diverse, and often contrasting, viewpoints on privatization. More importantly, this diversity of actors allowed me to triangulate the information I received through use of different sources: an account of the process that is verified by actors from

opposite sides of the political and economic map is more reliable than one that is accepted by one side, but rejected by the other. Second, in interviews, I was able to ask questions that went unaddressed in other sources of information.

Most interviews were face-to-face, conducted in Massachusetts, Texas or England, although I did conduct a few telephone interviews as well. The interview format was semi-structured. I used a recurrent skeleton of open-ended questions (see Appendix B) to which I added questions that were interviewee' specific. The length of interviews varied considerably. Some interviews lasted no more than 15-20 minutes. Others lasted for more than four hours. The length of most interviews was closer to the one-hour mark.

Case selection

My case selection was motivated by four hypotheses. First, in response to Power Resource Theory and the literature on political culture (to be discussed in length in chapter 1 and chapter 3 respectively), I hypothesized that we will witness more privatization in right-wing – conservative political systems than in political systems that lean towards the center or the left. Second, drawing on recent comparative politics literature on veto points (to be discussed in chapters 1 and 4), I hypothesized that the fewer veto points in a political system, the more extensive privatization would be. Third, based on Paul Pierson's theory of welfare state retrenchment, I hypothesized that the extent of variation in privatization would depend on the ability of program constituencies to oppose reform. This in turn depends on a) the number of stakeholders in a domain

and/or b) the public image (negative or positive) of stakeholders. The two related expectations-hypotheses are: a') the larger the policy domain, the larger the number of stakeholders, hence the less extensive privatization would be; b') the more negative the public image of stakeholders, the less public support they will receive in opposing privatization, hence the more extensive privatization would be.¹⁴

To evaluate these four hypotheses, I had to select cases that together would create variation on four dimensions: the left-right ideological/cultural position of political systems; the number of veto points in a political system; the domain size or number of stakeholders; and the public image of service recipients (summarized in table I.1 below).

Table I-1: Hypotheses and case selection criteria

Hypothesis	Case selection criterion
The more a political system leans to the right, the more extensive privatization would be	Right vs. center-left political systems
The greater the number of veto points, the less extensive privatization would be	Fragmented (many veto points) vs. unitary (one veto point) political systems
The larger the policy program, the less extensive privatization would be	Large vs. small service programs
The more positive the public image of service recipients, the less extensive privatization would be	Popular vs. unpopular recipients

¹⁴ I have not found sufficient evidence, however, to support or reject the hypothesis regarding domain image. Clearly, the affect of domain image is not overwhelming, otherwise there would be far more privatization in incarceration than in mental health. In fact, the opposite is true. Furthermore, interviewees did not link privatization in incarceration to the public image of the recipients. Nevertheless, when asked about the hypothesis, some commentators thought that there might be some truth to it.

The case selection criteria require creating variation across two general dimensions: political systems and policy domains (comparable service programs in different political systems).

I decided to add an additional selection criterion: I chose political systems in which privatization has been going on for some time. Studying privatization dynamics (the topic of the fifth chapter), requires having at least some cases in which privatization is not entirely new. I chose, therefore, to concentrate on two countries that were at the forefront of privatization: the United States and Britain. Furthermore, there was an additional advantage in selecting these two countries in that both belonged to the Esping-Andersen category of 'liberal welfare states'.¹⁵ I did not want to complicate the study by introducing additional institutional differences between cases with respect to their welfare state and economic structures. The clear disadvantage of limiting my case selection in such a way was that it could limit the applicability of the study's conclusions to exclusively liberal welfare states. Nevertheless, I believe that this is a price worth paying in order to attain robust conclusions. Moreover, a theory that applies to exclusively liberal welfare states is still a worthwhile goal: the list of liberal welfare states includes numerous important countries – the United States, Canada, Britain, Ireland, Australia, and New Zealand – and the list is very likely to expand in coming years.

The choice of these two countries, however, does pose another problem. The United States is a federal country in which most of the decisions regarding privatization are

¹⁵ Gøsta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Princeton NJ: Princeton University Press, 1990).

made at the sub-national level. In Britain, the recent devolution implies that privatization decisions in Scotland are made independently of privatization decisions in England. Hence, studying privatization exclusively on the national level, for most programs, would be a mistake, because the majority of decisions are made at lower levels of government. Therefore, I decided to concentrate research on the level of government most applicable for the program in question. For all three policy domains I ultimately chose, the appropriate focus in the United States was on the state level. In Britain, I concentrated on England and left Scotland out of my research.

Research of privatization decisions in the English case was relatively straightforward. Although lower levels of government (e.g., local authorities) have some formal power, most of the decision-making power is concentrated in Westminster and Whitehall. In the United States, however, relevant policymaking power is distributed among all three levels of government: federal, state and local. Therefore, despite the fact that my main focus was on the state level, I did supplement the state-centered research with information from the federal level (e.g., “The No Child Left Behind Act” in the case of education) or local level (e.g., the Dallas Independent School District contract with a for-profit education management company) whenever appropriate.

The choice of the American states and England offered a perfect comparison of a fragmented political system, with many veto points, to a unitary political system, with a single veto point. Creating the necessary variation on the left-right continuum across political systems was more challenging. Limiting the universe of cases to liberal welfare

states meant that I could not contrast the archetypical right-leaning country, the United States, with an archetypical left-wing country, such as Sweden. Nevertheless, there is considerable variation in right-left power across American states, with England, in most respects, aligned with the left end of the American spectrum. As my right-leaning state, I chose Texas. Texas has a very low unionization rate at 5 percent, a conservative political culture (to be defined in chapter 3) and the dominant party, in recent years, comes from the right. Texas also has the additional benefit of being a very important American state from a political standpoint: it has the second largest population in the country and a past governor in the White House. I chose Massachusetts as an example of a center-left state in American terms. Massachusetts' unionization rate is above the national average at 14 percent, it has a liberal political culture, and its legislature has been dominated by the Democratic Party for many years (the governor, however, is a Republican and I make use of this fact by contrasting privatization under a previous Democratic governor and privatization under a Republican governor). It is difficult to compare England to the American states. England, however, is at least to the left of Texas with a relatively high unionization rate at 28 percent and a more egalitarian political culture as is expressed in public opinion polls in which the British public consistently holds to more egalitarian views than the American public.¹⁶ The ruling party has changed in England from conservative to Labour (summary in Table I-2 below).

¹⁶ Ronald Inglehart, Miguel Basanez and Alejandro Moreno, *Human Values and Beliefs: a Cross-Cultural Sourcebook*, (Ann Arbor: The University of Michigan Press, 2001): V252.

Table I-2: Measures of variation across political systems

	England	MA	TX
Unionization rates	28% (57%)*	14% (54%)	5% (17%)
Political culture	More egalitarian than US	Liberal	Conservative
Dominant party	Varies	Democrat	Republican
Veto points	Centralized	Fragmented	Fragmented

* Figures in parenthesis represent public sector union density for 2003.

Sources: Bureau of Labor Statistics, "Union Members in 2003: Table 5, Union Affiliation of Employed Wage and Salary Workers by State," January 21, 2004; Stephen Hicks and Tom Palmer, "Trade Union Membership: Estimates from the Autumn 2003 Labour Force Survey," March 2004, http://www.statistics.gov.uk/articles/labour_market_trends/Trade_union_membership.pdf; Barry T. Hirsch and David A. Macpherson, "State: Union Membership, Coverage, Density, and Employment by State and Sector, 2003," www.unionstats.com; Department of Trade and Industry, "Table 18: Trade Union Density for Employees, by Selected Characteristics, Autumn 2003," *Trade Union Membership 2003* (July 2004), <http://www.dti.gov.uk/er/emar/tum2003.pdf>.

The choice of policy domains (a similar program across different political systems) was supposed to create variation on two different dimensions: domain-size and service-recipients' public image. I chose three policy domains – education K-12, mental health care for the seriously mentally ill, and incarceration – that, put together, create the necessary variation. In all three political systems, K-12 education is a larger policy domain with many more stakeholders than mental health care or incarceration, whether we measure domain size by budget, workforce or number of service recipients (see table I-3 below).¹⁷ Therefore, education is the one example of a large domain, with many stakeholders, while mental health and incarceration both represent small (or smaller) policy domains with far fewer stakeholders.

¹⁷ The relationship between domain size and the size of the stakeholder constituency is explored in depth in chapter 4.

Table I-3: Domain size

	Measure	Massachusetts	Texas	England
Mental health	Budget	\$644,222,619	\$714,220,699	£5.494 billion
	Recipients	~24,000	139,383	102,050 ¹⁸
	FTE	12,242	NA	NA
Incarceration	Budget	\$413 million	\$2.316 billion ¹⁹	~£1.7 billion
	Recipients	10,734	164,465	74,162
	FTE	4,918	39,977	~40,000
Education	Budget	\$7.794 billion	\$21.407 billion	£30.024 billion
	Recipients	952,822	4,059,619	7,472,901
	FTE	69,000	281,427	378,454

Sources: England Mental health: Hansard, Hansard Commons Written Answers, 17 December, 2003, Column 997W; House of Commons, Select Committee on Health Memoranda, Table 3.5.1 (h), 17 September 2003; figures for FTE in English mental health care are not centrally available (Hansard Commons, 17 January 2000, Column 293W); England Education: Department of Education and Skills, "Statistics of Education: Schools in England," 2003 Edition, Tables 23a, 23b; Department of Education and Skills, "Statistics of Education: Education and Training Expenditure Since 1993-1994," August 2003, Table 6a;

England Prisons: Home Office, "Prison Population Brief," England and Wales, October 2003; Hansard, Hansard Commons, Column 233, 12 May, 1999.

Texas Mental Health: Melanie Gantt and Kim McPherson, "Overview of the Mental Health System in Texas," June 2002; Texas Department of Mental Health and Mental Retardation, "Strategic Plan: 2003-2007," May 2002;

Texas Incarceration: U.S. Department of Justice, "State Prison Expenditures, 2001," June 2004; Texas Department of Criminal Justice, "FY 2003-2007 Agency Strategic Plan," 17 June 2002: 13; Texas Education: National Center for Education Statistics, "National Public Education Financial Survey," 1999; National Center for Education Statistics, "National Public Education Financial Survey," 2001, <http://nces.ed.gov/quicktables/Detail.asp?Key=994>; National Center for Education Statistics, "State Nonfiscal Survey," 2002, <http://nces.ed.gov/quicktables/Detail.asp?Key=760>;

Massachusetts incarceration: "State Prison Expenditures, 2001."; Correspondence with Denise King; Massachusetts Department of Correction Human Resources, 19 August 2004.

Massachusetts Mental Health: Doris Seavey, "An Industry Study of Services for People with Mental Retardation and Severe Mental Illness in Massachusetts," Special Report, Center for Research on Women, March 1999; Massachusetts Department of Mental Health, "2003 Annual Report,";

Massachusetts Education: Massachusetts Department of Education, <http://finance1.doe.mass.edu/>; National Center for Education Statistics, "National Public Education Financial Survey," 1999, <http://nces.ed.gov/quicktables/Detail.asp?Key=140>; "State Nonfiscal Survey," 2002.

¹⁸ This figure represents the number of publicly funded beds and not the total number of service recipients. The total number of service recipients in the mental health domain with public finance, however, includes many patients who are not considered seriously and persistently mentally ill. Thus, the use of service beds is probably a better proxy for estimating the size of this population than the use of the overall number of service recipients.

¹⁹ This figure is for state prison costs alone, which account for, as a national average, 77% of total incarceration costs. Thus, the total cost of incarceration in Texas is approximately \$3 billion ("State Prison Expenditures, 2001".)

Finally, I hypothesized that the more favorable the public image of service recipients, the better situated they would be to combat privatization. I chose one domain with very unpopular recipients (incarceration), one domain with very popular service recipients (K-12 education), and one domain in which the recipients have a mixed image (mental health). The combination of the three political systems with the three policy domains creates nine case studies that are specified in Table I-4 below.

Table I-4: Nine case studies

England mental health	Massachusetts mental health	Texas mental health
England incarceration	Massachusetts incarceration	Texas incarceration
England education	Massachusetts education	Texas education

Plan of the dissertation

The first chapter is dedicated to two tasks. First, it surveys the intellectual terrain to which this dissertation belongs. In the literature review, I examine three types of studies that either directly address the main question of the dissertation or provide a rich theoretical basis for generating hypotheses that apply to the dissertation's topic. I discuss the advantages and limitations of quantitative and qualitative studies that have addressed the question of the determinants of privatization. Next, I discuss the application of four theories that come from the public policy and welfare state literatures to the case of privatization of delivery. Second, the chapter sets out the theoretical framework of this work. In doing so, I also further clarify why this dissertation focuses on certain aspects of privatization and not on others.

The second chapter is dedicated to recounting the story of privatization (or lack thereof) in the nine case studies. The goal of this chapter is simply to provide the reader with a sense of what actually occurred in the different programs without complicating the picture (yet) with analysis. By providing this bird's-eye view of the cases, the reader will be able to place examples from the case studies, which are presented in the later chapters, in their appropriate context.

Chapter Three is the first of three analytical chapters. This chapter compares privatization across the three political systems: Massachusetts, Texas and England. In this chapter, I evaluate how political culture, legal incentives and restrictions, and institutional makeup (specifically veto points) have influenced privatization patterns in my study. These factors did not affect privatization in the way initially anticipated. Hence, the analysis suggests several reasons for this surprising outcome.

Chapter Four compares privatization across the three different policy domains: education K-12, mental health care for the seriously and persistently mentally ill, and incarceration. I find that the differences among policy domains are both significant and consistent across political systems. I explore different possible explanations for this privatization pattern and evaluate them in light of the evidence accumulated in the different case studies. The conclusions I derive from the cross- policy domain analysis are the ones that go the furthest in explaining the incidence and extent of privatization of delivery.

The final analytical chapter, chapter 5, examines how privatization evolves over time. Specifically, I describe and evaluate the effect of the privatization policy feedback loop. Privatization is shaped by both factors that are exogenous to it, such as those discussed in chapters 3 and 4, and endogenous factors that are influenced by past privatization experiences. In this chapter, I focus on what I consider the more important endogenous variables influencing privatization trends.

The concluding chapter is divided into three parts. First, it provides a summary of the main findings and conclusions of the dissertation. Second, it evaluates how well these conclusions apply to other privatization of delivery cases and two cases of privatization of transfers. Third, I discuss the implications of this study for service recipients and speculate on possible future privatization scenarios.

Chapter 1: Literature Review and Theory

Studies of privatization have focused, more often than not, on a comparison of the merits of private and public sector delivery. In recent years, however, a growing literature has developed in which the object of study is under what circumstances privatization comes about and how can the considerable variation in privatization experiences be explained.

In this chapter, I will review the literature that sheds light on the question of what determines the incidence and extent of privatization of delivery and then present my own theory.

Privatization literature

The literature review will present alternative explanations and perspectives on privatization of delivery. First, I will review qualitative and quantitative studies that set out to explain under what circumstances privatization (not necessarily privatization of delivery) takes place. Both types of research offer a wide range of explanatory variables and mechanisms by which these variables influence privatization. Yet, these studies fail to compare privatization across policy domains and by this, as I will argue, they overlook a central aspect of the privatization dynamic. Second, I examine four theories/perspectives that can be applied to the analysis of privatization of delivery: comparative institutions, Public Choice, Power Resource Theory and the “new politics of the welfare state”. I find that Paul Pierson’s “new politics” provides a good starting point for structuring a theory of privatization of delivery. Third, I develop a theory of

privatization of delivery that is able to explain privatization in the cases studies examined in this work and could be usefully applied to other cases as well. This theory explores the effects of two types of explanatory variables – motivational and environmental variables – on the privatization process and its outcomes. The privatization process is divided into three stages: policy formulation, initial adoption (or rejection) of privatization, and policy feedback effects.

Explaining privatization

There are two types of studies that address the question of the incidence and extent of privatization: studies that focus on one program or policy domain and large-n quantitative studies of privatization that aggregate data points from various programs across different locales. I will address each type in turn.

Case studies

One approach to tackling the privatization question is to conduct an in-depth inquiry of privatization in one policy domain in a small number of political systems or even concentrate on only one program. A good example of such a study is Adrian James et al. research regarding British prison privatization.²⁰ The book offers a richly textured description of the early stages of the British prison privatization process as it unfolded in the 1980s and the early 1990s. The study traces the causal chains beginning with such explanatory variables as policy learning from the United States and the government's intention to undermine unions through privatization of services. Such studies, usually

²⁰ Adrian James, Keith Bottomley, Alison Liebling and Emma Clare, *Privatizing Prisons: Rhetoric and Reality*, (London: Sage, 1997).

involving more than one program but limited to a specific policy domain, have investigated privatization in a wide range of policy domains among them mental health,²¹ prisons²² and education.²³ The main advantage of these studies is that they offer not just a list of possible explanatory variables for privatization (e.g., undermining public sector unions in the James et al. study) but also causal mechanisms predicated on strong supporting evidence from at least one program.

Research that compares privatization in one domain across different political systems is also valuable in creating the analytical leverage necessary to evaluate the significance of the different explanatory variables. Sara Bachman's study of mental health privatization in five American states, for instance, argues that organizational factors, such as enhancing institutional flexibility, are more important in explaining contracting out than economic factors (e.g., cost cutting). If Bachman were to study Oregon alone, however, were cost cutting through privatization did occur, this would have led Bachman to the (wrong) conclusion that privatization is generally motivated by cost containment considerations.²⁴ The comparison of five case studies convinced Bachman that while economic considerations for privatization could exist, they are not central to determining the prospects of the policy.

²¹ Robert A. Dorwart and Sherrie S. Epstein, *Privatization and Mental Health Care: A Fragile Balance*, (Westport CT: Auburn House, 1993); Sara S. Bachman, "Why do States Privatize Mental Health Services? Six State Experiences," *Journal of Health, Politics, Policy and Law*, Vol. 21, 4 (Winter 1996): 807-824.

²² James et. al 1997; C. Elaine Cummins, "Private Prisons in Texas, 1987-2000: The Legal, Economic, and Political Influences on Policy Implementation," doctoral dissertation, 2000.

²³ Lance D. Fusarelli, "The Interplay of Advocacy Coalitions and Institutions on School Choice in Texas: A Case Study of Charter Schools and Vouchers," doctoral dissertation, 1998; John Fitz and Bryan Beers, "Education Management Organizations and the Privatization of Public Education: A Cross-National Comparison of the US and UK," National Center for the Study of Privatization in Education, Occasional Paper No. 22, June 2001.

²⁴ Bachman, however, has since recognized the significance of cost-containment considerations (Sara Bachman, Boston University School of Social Work, January 16, 2003).

While qualitative comparisons within one domain offer more analytical leverage than single program studies they still do not go far enough for the purpose of creating a more general theory of privatization of delivery. These theories cannot take proper account of variation on what would seem to be a very important dimension for privatization – policy domain. Indeed, when one compares the explanations for privatization that emanate from studies dedicated to privatization of prisons with explanations for the privatization of education, one is struck by the considerable differences between the two. For the purposes of creating a general theory for privatization of delivery, it is necessary to extend research beyond a single domain.

Quantitative studies

Quantitative studies that investigate the relationship between proposed explanatory variables and privatization offer an alternative to the single domain qualitative studies of privatization. Over the last decade, numerous such studies have been published. These studies usually take advantage of aggregate data regarding the extent of private delivery across different local governments (counties and municipalities) and, less frequently, states. In some cases, the researchers survey local officials about privatization in their area and its motivations. Table 1-1, lists several of the more common explanatory variables mentioned in these studies.

Table 1-1: Summary of explanatory variables

Explanatory variable	Direction of effect (+ indicates positive effect, - indicates a negative relationship to privatization).	Rationale
Clean election laws	+	Minimize the opportunities for using public sector jobs for patronage making public sector jobs a less valuable political resource.
Political power of Right (parties and officials).	+	The Right is more supportive of privatization than the Left.
Union power	-	Unions oppose private sector expansion to conserve union jobs.
Public sector salaries	+	The higher the salaries, the greater are the cost savings from going private.
Conservative political culture (politicians or citizens).	+	Conservative philosophy is associated with preference for minimal state.
Budget crisis	+	Budget crisis would drive policymakers to explore new methods of cost containment, privatization included.
Size of town	+	Greater possibility of creating competition among providers in larger towns makes privatization more appealing.
Poverty	-	The poor prefer the public sector because it shields them from the market.

Sources: Florencio Lopez-de-Silanes, Andrei Shleifer, Robert W. Vishny, "Privatization in the United States," *Rand Journal of Economics*, 28, 3, (Autumn 1997): 447-471; Yolanda K. Kodrzycki, "Privatization of Local Public Services: Lessons from New England," *New England Economic Review* (May/June 1994): 31-46; Yolanda K. Kodrzycki, "Fiscal Pressures and the Privatization of Local Services," *New England Economic Review* (January/February 1998); George A. Boyne, "The Determinants of Variations in Local Service Contracting: Garbage In, Garbage Out?" *Urban Affairs Review*, 34, 1 (September 1998): 150-163; Graeme A. Hodge, "Privatization Patterns," *Privatization: An International Review of Performance*, (Boulder CO: Westview Press, 2000): 13-34; Jeffrey L. Brudney, Jay Eungha Ryu, and Deil S. Wright, "Exploring and Explaining Contracting Out: Patterns Among the American States" Paper Presented at the Annual Meeting of the American Political Science Association (Philadelphia PA: August 28 – 31, 2003).

This list is incomplete but it does include most of the major variables discussed in the quantitative literature.

Large 'n' quantitative studies hold two distinct advantages over most qualitative studies, my own withstanding: they are designed to arrive at generalizable results and they are able to weigh the relative importance of different variables that are found to be significant. This type of research, however, has its pitfalls too. I will mention four such problems: lack of good data, failure to demonstrate causality, conflicting conclusions regarding the importance of explanatory variables and inattentiveness to distinctions between privatization dynamics in different domains.

First, hard data, either on the rate of privatization or related to the explanatory variables, is difficult to come by and is not always reliable. This creates problems for the studies. To begin with, most privatization data sets specify the share of private provision for a specific year or two at most. This practice is understandable given the difficulty of gathering privatization related data. Nevertheless, the use of so few time points means that the studies fail to capture privatization as a process. George Boyne points out that a major implication of this practice is that it is not privatization that is measured in most of these studies. Rather, it is the share of private delivery, which might be constant over time, thus not constituting privatization at all.²⁵ Also, because of intractable problems in directly measuring the explanatory variable, the studies develop measurable variables that are often questionable proxies for the actual variable. Bryan Hassel, for example, uses

²⁵ George A. Boyne, "The determinants of Variations in Local Service Contracting: Garbage in, Garbage Out?" *Urban Affairs Review* Vol. 34, 1 (September 1998): 150-163.

average state income levels as a proxy for state innovativeness.²⁶ While there might be some relationship between the variable and its proxy, the use of income levels as a proxy for innovation is quite a stretch.

Second, quantitative studies produce correlations between the purported explanatory variable and a measure of privatization, but they fall short of demonstrating a causal relationship between the two. Boyne in his critical survey of quantitative research on privatization argues that results that appear conclusive are misleading because they fail to prove that it is the explanatory variable that is doing the work. Several studies find that union density, for example, is negatively related to private provision. Causality, however, might run from privatization to low unionization rates and not, as anticipated, the other way around. The private sector is less hospitable to unions than the public sector, so an increase in the private sector share of delivery, for whatever the reason, would lead to a decline in union membership. Qualitative research, in contrast, is much better at establishing causality through process tracing.

Third, the conclusions from various quantitative research projects tend to contradict one another. Even the impact of relatively easy-to-measure variables as union density (in contrast, say, to political culture) are evaluated differently in different studies.²⁷ In fact, Boyne finds that a considerable majority of the studies are in concurrence on the effects of only three of thirteen variables surveyed in his article (tax limits, income, and public

²⁶ Bryan C. Hassel, *The Charter School Challenge: Avoiding the Pitfalls, Fulfilling the Promise* (Washington D.C.: Brookings Institution Press, 1999).

²⁷ See Lopez-de-Silanes, Shleifer and Vishny (1995) and Hassel (1999) in support of the union power thesis; Kodrzycki (1994 & 1998) and Brudny et al. (2003) reject the thesis.

employees per capita). Even these results, Boyne argues, are questionable given the limitations of the data, the indeterminacy of causality, and problems in the definition of the dependent variable.²⁸

Fourth, and most fundamentally, the different quantitative studies do a generally poor job of accounting for differences across policy domains. Given the dearth of data points and the goal of formulating one general theory for privatization it is understandable that researchers would prefer to lump all privatization data from all domains into one large data set while paying far less attention to separate policy domains. This aggregation, however, comes at a high price. As will be discussed in length in this dissertation, different policy domains can follow distinct privatization logics and by aggregating all data points into one set, qualitative studies are missing important information.

The more general problem that existing quantitative studies are facing is that they fail to be sensitive to varying policy contexts, be they related to policy domain or to the temporal dimension (these studies, due to the fact that they tend to gather data for one year, or at most two, are inappropriate for analyzing changes in the privatization process over time). Obviously, one can refine the definition and measurement of quantitative variables, but the aggregation problem remains. Instead, I opt for a qualitative study that would be far more sensitive to the changing social, political and economic context of privatization of delivery than quantitative studies. The research, however, is not limited to one policy domain or political system, thus creating greater analytical leverage by utilizing comparisons of explanatory variables across changing policy environments.

²⁸ See Boyne (1998).

Qualitative studies propose explanatory variables and detailed causal mechanisms. The quantitative studies test numerous variables by utilizing large data sets. What appears to be missing from these studies is a sense of a broader context. In the next section, I will review a body of literature that while not directly addressing my research question can still be used to situate the privatization process in the broader social policy making context, and could also help generate interesting hypotheses regarding privatization of delivery.

Alternative theories and perspectives

In this section, I will discuss four theories of public administration and welfare state development that offer alternative perspectives on the question of the incidence and extent of privatization. The four theories are: comparative institutions, Public Choice, Power Resource Theory (PRT) and the new politics of the welfare state. These four approaches differ substantially in who they cast in the leading roles in the privatization process and in the type of motivations they impute to actors (see table 1-2).

Table 1-2: Four theoretical approaches to privatization

	Comparative institutions	PRT	Public choice	Pierson
Most influence	Veto players	Political party and unions	Bureaucracy and other vested interests	Program constituencies
Motivation	unspecified	Ideological and class interest	Self interest	Ideology and self interest

My own theory is closer to that of Pierson's than to the others. Nonetheless, my case selection was motivated by two of the other theories, comparative institutions and PRT,

in addition to that of Pierson, and the public choice approach initially framed my expectations, though not my conclusions.

Comparative institutions

For many years now, social scientists have appreciated the importance of formal institutions (e.g., elections, legal systems) in shaping public policy. One implication of this relationship between formal institutions and policy is that the policy process, and resulting policies, vary across political systems that consist of different formal institutions. In some cases, the constitution explicitly proscribes or mandates certain policy outcomes. Thus, for example, in the United States the constitution prohibits government support for religious purposes, something that limits policy options that are available in other political systems. It is possible that privatization policy is constrained or shaped by such legal factors, and some of the differences in privatization policy could be explained by variations in the pre-existing legal code.

Formal institutions could shape policy in a less direct fashion as well. Already in 1954, Austin Ranney, argued that parliamentary governments, because of their greater unity, would be better than presidential governments in producing efficient policy.²⁹ More than twenty years later, in an attempt to explain cross-national variation in social expenditure, David Cameron, appealed to the greater ease of increasing spending in unitary systems in comparison to federal systems.³⁰ The concept of veto points aptly captures the logic of

²⁹ Austin Ranney, *The Doctrine of Responsible Party Government: Its Origins and Present State* (Urbana IL: University of Illinois Press, 1954).

³⁰ David R. Cameron, "The Expansion of the Public Economy," *American Political Science Review*, 72, 4 (1978): 1243-126.

many of these comparisons of institutional structure- derived policy outcomes. Some types of political system create more opportunities, for various actors, to effectively block policy initiatives than others. George Tsebelis refers to these 'opportunities' as veto points. He argues that the more veto points in a political system, the more difficult would it be to initiate new policies.³¹ Hence, we should expect privatization to proceed more smoothly in political systems with few points (e.g., England), than political systems with multiple veto points (e.g., United States).

The comparative institution perspective promises to explain much of the evident differences in policymaking, privatization withstanding, across political systems. Nevertheless, this perspective suffers from a major flaw: it tends to over-simplify the complexities of political systems. Constitutions, for example, are more open-ended and flexible than many commentators would allow. Furthermore, though it is true that federal systems of government create more veto points than unitary systems, they also create more points of access into the policy process. I will further explore these issues in my comparison of political systems in chapter 3.

Public Choice

Public Choice is rational choice theory applied to public administration. Public choice is predicated on two fundamental assumptions. First, the average individual is a self-interested utility maximizer. Second, decisions are all made by individuals, not

³¹ George Tsebelis, "Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism," *The British Journal of Political Science*, 25 (July 1995): 289-325; Manfred G. Schmidt, "The Impact of Political Parties, Institutional Structures, and Veto Players on Public Policy," in Hans Keman (ed.) *Comparative Democratic Policies* (London: Sage Publications, 2002): 166-184.

collectives.³² These two simple assumptions are the basis for an incisive critique of public administration. William Niskanen, in what is the classical statement of public choice theory, argued that bureaucrats wish to maximize the budget of their departments because this enhances their personal power and prestige. Politicians, in turn, have strong incentives to oblige and increase budgets in order to provide constituents with contracts, jobs and services. The result is an ever-growing bureaucracy.³³

The classical formulation of public choice, however, is unable to explain privatization as Patrick Dunleavy explains:

“There cannot be any necessary quality about bureaucratic over-supply and budget-maximization behavior if a simple change of political will at the helm of representative institutions is enough to make the state apparatus operate in a basically different way.”³⁴

Public choice predicts a continuous expansion of bureaucratic agencies and the public sector. Privatization confounds this prediction.

The classical variant of public choice, therefore, is useless for explaining privatization. The theory, however, can be modified in ways that would allow it to better accommodate privatization. Stephanie Hoopes sets out to explain the oil industry’s privatization in Britain during the 1980s. Her main revision of the classical statement of public choice is recognition of the fact that not all bureaucrats have an interest in expanding their agency’s budget. Different bureaucrats are related to institutions in different ways making for divergent and often conflicting incentive structures. Hoopes argues, for instance, that

³² James M. Buchanan and Gordon Tullocks, *The Calculus of Consent: Legal Foundations of Constitutional Democracy*, (Ann Arbor: University of Michigan Press, 1962).

³³ William A. Niskanen, *Bureaucracy and Representative Government*, (Chicago: Aldine, 1971).

³⁴ Patrick Dunleavy, “Explaining the Privatization Boom: Public Choice Versus Radical Approaches,” *Public Administration*, Vol. 64 (Spring 1986): 18.

while many bureaucrats would object to privatization because it reduces their power and might cost them their job, others may actually welcome privatization because it creates for them lucrative employment options in the private sector.³⁵ Dunleavy in his explanation of privatization also argues that not all bureaucrats have a personal interest in the expansion of the public sector. Top managers might actually be interested in having routine tasks removed from their agency.³⁶

Public choice, in its modified institution-sensitive form, therefore, could be applied to privatization. In fact, many of the central findings of this dissertation are amenable to public choice explanations. The fact, for example, that privatization of mental health has gone further than privatization of education can be attributed to the relative political strength of vested interests in each domain. In both domains, there are many actors who have a strong personal stake in the public system and would, therefore, fight against privatization. The sheer number of stakeholders in education, however, is far greater than in mental health translating into greater electoral power and political clout.

This explanation of the difference across domains is, by in large, correct but this does not necessarily confirm the theory. The stakeholders, for example, in both domains may object to privatization not on grounds of self-interest but for other reasons. James Q. Wilson showed how important institutional culture could be in determining the behavior

³⁵ Stephanie M. Hoopes, *Oil Privatisation, Public Choice, and International Forces*, (New York: St. Martin's Press, 1997).

³⁶ Dunleavy (1986).

of bureaucrats in his 1989 study of the bureaucracy.³⁷ Opposition to privatization could, therefore, be motivated by certain institutionally-cultivated beliefs about how things should be done. Opposition is not always an expression of self-interest.

Public choice theory is difficult to refute because it is almost always possible to impute some form of self-interest to the actors involved in the policy process. It is unclear, however, that such an assumption is warranted or offers any additional insight into the policy process. In many of the case studies, I have come across actors that have no apparent personal stake in the policy, yet they invest both time and money in promoting their privatization-related agenda. If one examines many of the advocacy groups or think tanks that support or oppose privatization, one often finds that their financial backers have little to gain or lose by privatization. These individuals act out of a strong belief that privatization would promote or undermine the public good. In some cases, certain actors might actually take a stand that opposes their own narrow self-interest. For example, there is a shortage in medical practitioners in England: doctors and nurses. These professions, therefore, would stand to benefit from privatization of health services. In a commercial health market, their scarce skills would incur higher monetary returns than in a system dominated by a single state purchaser and provider. Nevertheless, the British Medical Association, the medical community's most important professional organization, is adamantly opposed to privatization. Clearly, narrow material interests do not always determine policy views. While public choice theory sometimes can correctly predict the

³⁷ James Q. Wilson, *Bureaucracy: What Government Agencies do and why they do it*, (New York: Basic Books, 1989).

outcomes of the privatization process, its reliance on self-interest as an overriding motivation in the policy process is questionable.

Power Resource Theory

The welfare state literature of the last two decades has increasingly focused on the question of development and change in the welfare state. These theories of the welfare state explore the political, social and economic environment in which welfare policies and institutions are transformed. Such theories can be usefully applied to privatization of delivery enabling researchers to better understand the circumstances under which structural changes (privatization in our case) occur and the general context of institutional transformation.

PRT is perhaps the most influential theory in the welfare state literature for explaining welfare state development. PRT suggests that the greater the political power of the left, the more comprehensive and extensive will the welfare state be. Thus, the ideological identity of the ruling party/ policymakers and the degree of union power (a function of union density and concentration) will have a major influence on the type of policy adopted.³⁸ One might expect right-wing policymakers to be more privatization-oriented than policymakers of the center left because privatization is often conceived as a method of shrinking the state. Furthermore, unions, fearing the loss of public sector jobs and union members (union membership is lower in the private than in the public sector) will

³⁸ Gøsta Esping-Andersen and Walter Korpi, "Social Policy as Class Politics in Post-War Capitalism: Scandinavia, Austria and Germany," in John H. Goldthorpe, (ed.), *Order and Conflict in Contemporary Capitalism*, (Oxford: Clarendon Press, 1984), 179-208; Evelyn Huber and John D. Stephens, *Development and Crisis of the Welfare State: Parties and Policies in Global Markets*, (Chicago: The University of Chicago Press, 2001).

also oppose privatization. The PRT's explanation of the rise of privatization, therefore, would be that privatization emerged as a right-wing policy and the waning power of the left, during the last two and a half decades, allowed private delivery to make significant inroads in liberal welfare states. Variation in the extent of privatization, according to PRT, is explained with reference to the relative power of the political left and unions across political systems and political domains, and over time. Thus, for example, the fact that extensive prison privatization occurred in Texas but not in Massachusetts can be explained by the dominance of the Democrats in Massachusetts, but not in Texas, and the greater union power in Massachusetts.

PRT, therefore, offers us a powerful prediction regarding privatization that is grounded in a broader understanding of welfare state transformation. The application of PRT to privatization of delivery, however, suffers from at least two important faults that are related to PRT's inattentiveness to political dynamics and its neglect of a broad range of influential groups and organizations. First, the evidence regarding the negative relationship between left power and privatization of delivery is mixed. It is a mistake to assume that politicians from the center or left of the political map would always be opposed to privatization. The British experience of recent years demonstrates that a center-left party, Labour, can be no less ardent a privatizer than their right-wing counterpart. The leaders of Labour, namely Tony Blair and Gordon Brown, have stressed that they view the private sector as a desirable partner in the delivery of state-funded

services.³⁹ In Massachusetts and Texas, initial legislation allowing for the establishment of charter schools, including schools run by proprietary firms, was supported and even initiated by Democratic leaders. Privatization of delivery is not solely a right-wing policy. Many times it is endorsed by the center and left.⁴⁰

Nevertheless, it does seem to be the case that right-wing policymakers are more likely to support privatization (although right-wing support for privatization is far from absolute) than their counterparts on the left and center. This, however, does not translate into a higher probability that privatization will take place under a right-wing government than a centrist government. Why? In the process of adopting a privatization policy, politicians of the center-left that are intent on passing enabling legislation will face less political opposition to privatization than right-wing privatizers. The centrist-left politician can usually count on receiving support from all politicians to her right. In contrast, the right-wing politician should anticipate an active opposition to his left. This state of affairs applies well to all three political systems included in the study. Furthermore, the public image of privatization of delivery also depends on the political identity of the privatizer favoring the centrist-left privatizer over privatizers from the Right. As one former conservative minister explained, the public is more suspicious of right-wing privatizers fearing that the true intentions of privatization of delivery is to ultimately cut back public

³⁹ See Kevin Maguire, "Blair Lashes Left as he Calls for Partnership," *Guardian*, 11 September, 2002; and Gordon Brown speech reported in "Blackpool: Chancellor Defends PFI," *London Times*, 30 September, 2002.

⁴⁰ One common objection to the contention that the left supports privatization is that Labour in Britain and the Democrats in the US are not really parties of the left but centrist parties. One response to the objection is that at the very least the study demonstrates that in liberal welfare states the center-right position of policymakers is not an important predictor of privatization of delivery. Second, even "pure" left parties, such as the SAP in Sweden, have privatized in recent years (The SAP privatized over 14% of the pension funds in 1998 by creating individual accounts).

funding and not just public delivery.⁴¹ The center and left are perceived, in contrast to the right, as committed to the welfare state, so the public is less wary of privatization of delivery initiatives coming from the left than those initiated by the right. Thus, the Right is more apprehensive about the possible public backlash from privatization of delivery than the left and one implication of this is that right-wing politicians often do not pursue privatization because of an anticipated negative public response. While right-wing politicians tend to be more inclined than their left and center counterparts to privatize delivery, they have a harder time of seeing privatization through and the outcome is that the political identity of policymakers offers little indication of whether privatization will take place or not.

Second, unions, in contrast to left and center parties, are, indeed, universally opposed to privatization of delivery. What is striking, however, is union failure to block privatization even in periods in which their political allies were in critical positions of power. The unions, for example, have not managed to block Labour's privatization of delivery initiatives despite the fact that they contribute heavily to Labour coffers and that many Labour MPs are union members.⁴² It is not that unions are not effective, at times, in blocking privatization initiatives. Rather the evidence from my case studies, and other research in the field, indicates that the relationship between union power and privatization is not straightforward. One reason is that the fact that a union is powerful in a certain program could actually make it a more attractive target for privatization for right-wing policymakers. Privatizing delivery in such a program would lessen union

⁴¹ Simon Burns, MP and former Minister responsible for mental health, July 3, 2003.

⁴² Interview with Neil Cleeveley, Trade Union Conference (TUC) Policy Officer, London, June 27, 2002; Interview with Alex McKenna, Policy Officer, AMICUS Union, London, July 1, 2002.

power – a politically advantageous strategy for the right and a possible step on the way to lowering employee wages and benefits. A second factor that complicates the union-privatization relationship is that unions on their own are not sufficiently important, from a political standpoint, to block privatization, but as part of a wider anti-privatization coalition, they could be quite effective. During the 1980s, Thatcher famously confronted the powerful miner unions and won the battle. Interestingly, Thatcher did not stand up to public service unions in the same way. Most probably, Thatcher was afraid of taking on the public services because she was aware that they had much wider support than the miner unions within her own constituency. Members of the public were less concerned about pits closing their gates than about reforms in public services that would affect not only public service workers but also the services that the public gets. Unions, in other words, are not the only, or necessarily the most important, stakeholders in a service domain. Other stakeholders exist in service policy domains, primarily the recipients of services. Unions, of course, still have some independent influence, especially if they are large and well organized. Be that as it may, unions that are successful in blocking or slowing down privatization, often rely on the support of advocacy groups and service recipient associations (e.g., the Coalition for Public Schools in Texas includes a wide array of associations besides teacher unions). PRT narrowly focuses on unions, and by doing so, it overlooks the significance of other non-governmental stakeholders in the policy domain in the privatization process.

PRT is correct in stressing the importance of left-wing power to politics. Nevertheless, the theory is too simplistic in the way it translates relative right-left power into policy. It

neglects political considerations that might discourage right-wing politicians from pursuing a right-wing agenda and it ignores the important role of organizations other than parties and unions (or organized business) in deciding policy.

In chapter 3, I will discuss the application of political culture/ideology to the privatization question. Classifications of political culture do not fully overlap with the 'right – left' ideological distinction, but at least for my own political culture' classification, there is considerable overlap. Hence, the discussion of political culture elaborates on some of the PRT related counterarguments made in this sub-section.

The new politics of the welfare state

Paul Pierson's analysis of welfare state retrenchment can be directly applied to privatization of delivery; "major transfers of responsibility to the private sector" is one of the constituent elements of welfare state retrenchment.⁴³

Pierson's theory includes at least five insights that are applicable to this study.

First, Pierson's study can be read as a response to PRT. Pierson argues that PRT cannot adequately account for the dynamics of welfare state retrenchment. While left power declined considerably during the 1980s in Britain and the US, there was no corresponding roll back of the welfare state, as PRT would predict. The reason for this mistaken prediction, according to Pierson, is that PRT pays too much attention to unions and too little to welfare state constituencies (see discussion in previous sub-section). The development of transfer and service programs in the welfare state has created

⁴³ Paul Pierson, "The New Politics of the Welfare State," *World Politics*, Vol. 48, 2 (January 1996): 157.

constituencies that have a stake in the existing system and create a strong opposition to retrenchment. Thus, unions can be weak, yet retrenchment may still be defeated by other stakeholders.⁴⁴

Second, retrenchment is a difficult political task. The underpinning logic of the process is that while the costs are concentrated for the stakeholders, the benefits of retrenchment are diffuse. Thus, politicians who pursue retrenchment face the electoral risk of alienating the relevant program constituency that suffers the costs of retrenchment without gaining support from any specific group because benefits are diffuse.

Third, welfare state stakeholders do not comprise one large constituency. Rather, each policy domain has its own network of recipients, practitioners, advocacy groups etc. Hence, in order to understand the political dynamics of retrenchment, research should concentrate on specific policy domains, even more than on specific political systems, because each program will have its own constituency and institutions.

Fourth, retrenchment, nonetheless, is possible if policymakers pursue it by use of methods that weaken the opposition or obfuscate the policymakers' responsibility for privatization. Pierson mentions three general methods: Decreasing the visibility of retrenchment (or obfuscation), creating divisions within the opposition, and the use of side payments for those who are negatively-affected by retrenchment.

⁴⁴ Paul Pierson, *Dismantling the Welfare State? Reagan, Thatcher, and the Politics of Retrenchment*, (Cambridge: Cambridge University Press, 1994), 28-30.

Finally, past retrenchment can affect the shape and prospects of current retrenchment through a policy feedback loop.

Pierson's "new politics" theory appears to offer the best framework, from the alternatives discussed, for analyzing privatization of delivery. As mentioned in the discussion of PRT, this study demonstrates that welfare state constituencies are central political actors in the privatization process. Furthermore, the focus on the constituencies of different policy domains is fully justified in this study. Different domains have different constituencies with different goals and capabilities. To explain variance in privatization levels there is no better place to start than with the variation in domain constituencies. Pierson's discussion of retrenchment facilitating policies is also pertinent to privatization. As I will discuss in the section dedicated to policy domains, privatization of delivery is often made possible by adopting policies that reduce the public visibility of privatization and weaken the opposition. Finally, Pierson's view of retrenchment as a dynamic process, involving a policy feedback loop, applies equally well to privatization of delivery, as will be elaborated in chapter 5.

There are, however, several problems with directly applying the "new politics" theory to privatization of delivery. First, the logic of "diffuse benefits, concentrated costs" on which the theory relies, is less appropriate for privatization of delivery than it is for financial retrenchment. In the case of privatization of delivery, in contrast to financial retrenchment, the benefits of privatization could be concentrated. This is true, primarily, for private sector providers of the service in question that stand to gain market share if the

service is privatized. For instance, the privatization of incarceration, in the United States, constitutes a concentrated interest for private prison firms, especially for Corrections Corporation of America (CCA), a company that comprises by itself more than half of the private prison sector. Given its concentrated interest, it is no surprise that CCA lobbies executives and legislatures across the country to initiate or expand privatization of prisons. Moreover, costs are perhaps concentrated for public sector workers but not for recipients of the service. In contrast to recipients of transfer program benefits – benefits that are cut due to retrenchment – service recipients are not necessarily worse off when the service is provided privately. Given the fact that, according to Pierson, program recipients are the most important group constituting the welfare state constituency, this difference between retrenchment and privatization of delivery is very important. The main practical implication of this point is that support for privatization of delivery would likely be stronger (because of the existence of concentrated benefits) and opposition to it weaker (because service recipients do not suffer from concentrated costs) than for financial retrenchment.

Second, Pierson argues that retrenchment is generally difficult and radical retrenchment rare. Yet Pierson himself acknowledges that radical retrenchment does occur in some cases (e.g., public housing in Britain) and the mental health case studies in this study are evidence that radical privatization is possible. Pierson suggest that variation in program retrenchment is probably due to variation in the use of methods intended to obfuscate retrenchment and weaken the opposition. This study, however, finds that major differences in the extent of privatization of delivery are often the result of differences in

fundamental features of the policy domains and not merely variation in the use of obfuscation methods (although these have some significance as well).

Third, Pierson's empirical study examines the same countries as does this study, but looks at very different programs.⁴⁵ Pierson focuses mainly on transfer programs while this study examines services. One implication of this difference in focus is that the methods for reducing visibility and weakening opposition are not the same for the two studies. Pierson, for example, mentions the elimination of benefit indexation (for inflation) as a popular method of obfuscating retrenchment. This method, however, is inappropriate for obfuscating privatization of delivery. This dissertation will explore means of reducing policy visibility that apply to privatization of delivery that are, understandably, different from the ones Pierson presents in relation to retrenchment in transfer programs (see chapter 4).

Finally, Pierson alludes to the significance of feedback loops in the policy process, but offers no concrete examples in his work of how these loops function and what is the feedback mechanism. This study, in contrast, dedicates a chapter to the analysis of privatization dynamics (chapter 5). In order to get a better grasp of the changing nature of privatization, the process is separated into three distinct stages as is discussed in the next section.

Pierson offers a valuable analytical framework for analyzing privatization of delivery but it must be modified and complemented in several important ways. A theory of

⁴⁵ Pierson (1994).

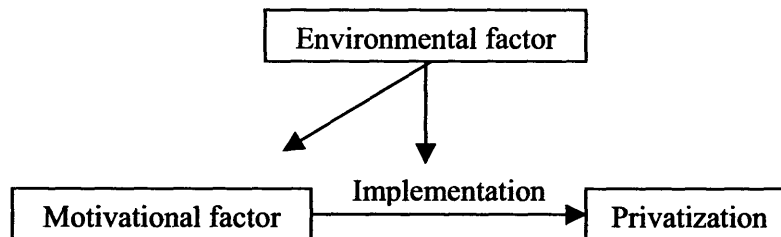
privatization of delivery should carefully examine policy domain stakeholders and it must provide an adequate explanation for why some stakeholders are better able, or more willing, to resist privatization than others. A theory of privatization of delivery should not assume that support for privatization is weak. Specifically, it should account for the actions (or inaction) of private providers. The theory should also examine and describe techniques used by policymakers to facilitate privatization. Finally, a suitable theory of privatization should be dynamic in the sense of being attentive to changes in privatization over time, caused by endogenous or exogenous factors.

Theory

Motivational and environmental variables

Research on privatization has focused on a number of explanatory variables. These variables, I argue, are best separated into two general categories: motivational and environmental variables. The first category, motivations, includes such variables as “ideology” and “cost efficiency”.⁴⁶ The items in this category specify the type of considerations that guide the proponents of privatization. Environmental variables, the second category, do not directly speak to goals or motivations. These variables, however, structure the socio-economic and political environment in which policymakers act. Variables such as “union power” or “public sector performance” could influence both motivational variables and the prospects of implementing privatization. Poor public sector performance (environmental factor) with respect to cost-containment, for example, could bring some policymakers to promote privatization in order to reduce costs (motivational variable). Strong union opposition (environmental factor), however, could thwart the approval of privatization legislation.

Figure 1-1: Motivational and environmental factors



⁴⁶ Other important motivational variables are: quality, choice, flexibility, patronage and undermining political opponents.

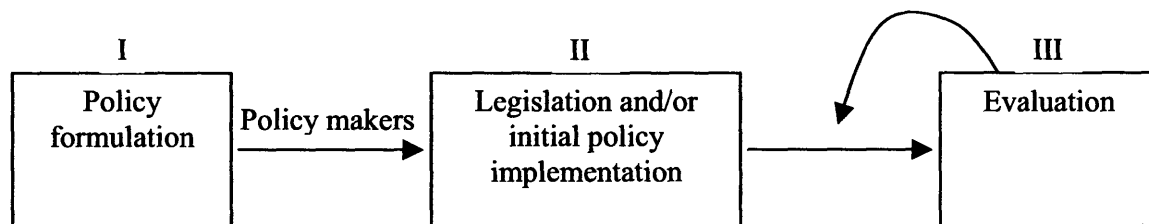
In this study, I will discuss environmental factors far more than motivational variables. The reason for the greater emphasis on environmental factors is twofold. First, it is very difficult to connect the outcomes of the privatization process to the motivations of the different actors, because different actors promote privatization for different reasons. Furthermore, it is often the case that a single actor is motivated by a number of considerations without any one overriding motivation.

A second problem is that even if from the inside, as it were, a policymaker might be able to not only identify clearly the main motivations for her actions but also to rank them, it is often difficult to discern these motivations from the outside. This is especially true of motivations that policymakers have good reason to conceal from the public. For example, politicians might privatize because they anticipate that privatization would lead to personal financial gains, yet no politician would admit this. In my research, I found that it is difficult to systematically account for actor' motivations in the policy process and well nigh impossible to extrapolate from motivations to privatization' outcomes. This does not mean that studying motivations is useless. In fact, I find that declared motivations (henceforth justifications) for privatization vary in an interesting and meaningful way across two types of policy domains (see the discussion of large and small policy domains below). Nonetheless, the focus of the study is on environmental variables, because they constitute the building blocks of a more workable framework for understanding the privatization process and its possible outcomes. In the following discussion of the privatization of service delivery process, the focus is on environmental variables, especially in the second and third process stages.

The process

The process of privatization can be usefully separated into three stages.⁴⁷ The first stage is the development and propagation of the idea to privatize a specific service. In this stage, the idea of privatizing a specific service is formulated and is presented to policymakers and other actors that could affect the privatization process. The second stage is the political attempts to pass privatization-enabling legislation and/or approve a privatization policy. The third stage comes after the implementation of initial privatization. In it, privatization is evaluated by different actors (or reevaluated), and then expanded, slowed down or reversed. Obviously, the third stage of the process is continuous.

Figure 1-2: Three stages of Privatization



The empirical study's focus is on the second stage of the privatization process: the initial political struggle to approve and implement privatization. As will be explained below, the first stage sheds little light on the outcomes of the privatization process, so the empirical chapters will address it only in passing. The third stage is important, but the relatively

⁴⁷ In the public policy literature, there is extensive discussion of the number and characteristics of the different stages of the policy process. I have kept the number of stages in the process to what I believe is the bare minimum for the sake of parsimony. While it is possible to construe more stages for the privatization process (e.g., consider problem identification as the first stage and implementation as a stage subsequent to policy approval), I doubt whether the gains from such an exercise justify the additional complexity.

short time span of most privatization processes in my study (and in general) makes the findings related to this stage more tentative than those related to the second stage. Nonetheless, the chapter dealing with privatization dynamics (chapter 5) will be dedicated exclusively to the third stage of privatization.

First stage: formulating privatization

One of the questions that analysts of the public policy process have discussed in length is: “where do policy’ innovations come from?” John Kingdon emphasizes the importance of policy entrepreneurs in introducing policy alternatives to policymakers.⁴⁸ In the case of privatization, policy entrepreneurs come in different shapes and sizes, but five types of entrepreneurs are especially important: think tanks, potential private sector beneficiaries from privatization, government-related officers and bodies, politicians and committed private individuals.⁴⁹

First, there are the think tanks. These think tanks, which usually subscribe to a free-market philosophy, specialize in generating policy proposals related to privatization in general, or in specific fields, and disseminating these proposals throughout the political world. It is difficult to evaluate the real importance of think tanks in spreading the privatization gospel, not least because politicians are reluctant to forego any credit for policy innovations.⁵⁰ Nevertheless, there is little doubt that in the early years of privatization (the 1980s), the role of think tanks in articulating the privatization idea was

⁴⁸ John W. Kingdon, *Agendas, Alternatives, and Public Policies* (New York: Longman, 1995).

⁴⁹ This is by no means intended to be an exhaustive list of the propagators of privatization. The list does, however, include the actors I believe are the most important participants in this stage of the process.

⁵⁰ For a discussion of politician’ credit taking see: David R. Mayhew, *Congress: The Electoral Connection*, (New Haven CT: Yale University Press, 1974).

critical to its success. Today the importance of think tanks is in their ability to supply privatization-oriented politicians with persuasive reasons to privatize – reasons that politicians use in the political debate.

Second, potential private sector beneficiaries from privatization, which I will call private entrepreneurs, belonging both to the for-profit and nonprofit sector, often promulgate the privatization idea. Privatization would allow them access to the most important funding stream in many service domains. While the privatization literature tends to focus much of its attention on for-profit lobbying, it should be emphasized that nonprofits are also active in promoting privatization. For example, in the case of prison privatization in England and Texas, private entrepreneurs, including a non-profit in Texas, were involved from early on in planting the idea in the minds of policymakers (first stage of the privatization process), and later in getting privatization-enabling legislation passed (second stage).

Third, privatization is often characterized as an attack on the state, but in some cases privatization initiatives come from within the public sector. In some instances, bureaucrats are the ones that initiate privatization. Several American states, Texas among them, established privatization commissions to study the potential for privatization of different state services. In other cases, internal department units and reports have proposed privatization as a possible response to specific problems.⁵¹ Many privatization initiatives of these types are the product of policy learning from other states and political systems.

⁵¹ Deborah A. Auger, "Privatization, Contracting, and the States: Lessons from State Government Experience," *Public Productivity & Management Review*, Vol. 22, 4 (June 1999): 435-454.

Fourth, we should not underestimate the importance of committed individuals; people who are not affiliated to think tanks or any relevant economic concerns, but believe strongly in privatization and are willing to spend much of their time and money to spread the gospel of privatization, either generally or applied to a specific field. Policymakers are often attentive to such individuals, perhaps because they respect these individuals' selfless commitment to a cause and the absence of a self-interested motivation creates credibility.

Finally, formulating the privatization idea in the first place is a process that often involves one or more of the four types of actors mentioned above: right-wing think tanks, private entrepreneurs, government-related bodies and officials, and committed private individuals. Without politicians that embrace the idea and become vehicles for its promotion, however, there is no privatization. In fact, in some cases it seems that the politicians themselves come up with the idea to privatize a specific service and then carry the plan through the policy process. In my interviews, when asking politicians who promoted specific privatization projects where the idea came from, I often got the response that the idea was "in the air". What this implies is that privatization is by now so prevalent in political and policy circles that it has no longer to be suggested to a politician by other actors; politicians are quite aware of this policy tool and take it into consideration in devising policy.

What can we learn from what occurs in the policy formulation stage regarding the ultimate success of privatization? Unfortunately, very little. While early on, the incidence of privatization could have depended on whether it was proposed or not, in the last few years this is not an issue. In all the nine case studies, privatization initiatives, whether successful or not, were and are continuing to be proposed. Kingdon's approach to ideas seems to apply well here: understanding the policy process and its outcomes has little to do with the origins of policy ideas and the way in which they were formulated.⁵²

Second stage: the political process

This study examined variation in privatization across two dimensions: political systems and policy domains. I will address each in turn.

Political systems

Very little work has been done to examine how privatization varies (or not) depending on political system. The comparison of the two American states with England contrasts two very different political systems. I will address three political system related variables: fragmented vs. unitary government, the existence of constitutional barriers to privatization, and political culture.

The American political system is fragmented. Horizontally, the separation of powers creates three competing centers of power in the three branches of government. Vertically, federal, state and local governments are all involved in formulating and administering public policy. The centralized and unitary British government, in contrast, concentrates

⁵² Kingdon (1995).

most of the decision making power in Westminster. The implications for privatization in the two systems can be quite substantial. In England, for example, the prime minister was even involved in a relatively small issue such as who manages the Local Education Authority in Liverpool. In Texas, in contrast, the Houston Independent School District has opened and closed numerous privately managed schools without any external intervention.

What effect, then, does fragmentation have on the incidence and extent of privatization? One distinct possibility is that, all else being equal (and it never is), we will witness more privatization in the unitary political system than in the fragmented political system. The reason being that radical reform is easier to achieve in a streamlined political system than in a fragmented political system with multiple veto points. We should expect, therefore, privatization to go further in England than in the two American states. This study, however, does not support this proposition. The privatization rates of the different services in England do not appear to be very different from the parallel services in the American states.

There are numerous ways of explaining this outcome. One explanation, however, stands out when taking the evidence from the different case studies into consideration. While fragmented political systems do create many more veto points, they also, correspondingly, create more entry points for policy entrepreneurs. All levels of government – federal, state, and local – have initiated privatization, in the United States, with initiatives coming from both the legislature and the executive. Even the courts can

facilitate privatization despite the fact that they cannot directly establish it as policy. Courts have challenged certain existing policies as illegal or unconstitutional, and by doing so, they have put an end to the status quo and opened the way for new policies – privatization among them. I argue that while it is true that fragmented political systems create more obstacles for privatization, at the same time, they offer more ways of promoting privatization by challenging the status quo, thus, largely offsetting the negative effect of the veto points.

Second, the privatization literature often points to the federal and state constitutions in America as being a major obstacle to privatization – an obstacle that is nonexistent in England. The disestablishment of religion in the American constitution has been interpreted, until recently, to mean that public support for sectarian institutions should not be allowed. In several state constitutions, there is an explicit prohibition, known as a Blaine amendment, on state support for religious schools (sometimes extended to all private schools). Some observers see such amendments as insurmountable hurdles to privatization. The evidence from the American states, however, suggests that restrictive federal and state level constitutional amendments can be overcome in two ways. First, restrictive amendments in the constitution can be reinterpreted to allow for privatization, as was the case with the Supreme Court ruling approving the use of public school vouchers in sectarian schools in *Zelman v. Simmons* (2002). Chief Justice Rehnquist explained in the majority opinion that it is the parents who make the choice of a sectarian school for the children in a typical voucher scheme, so the state is not directly supporting religious institutions by funding the parents' choice. Thus, voucher schemes do not

violate the “anti-establishment” clause and are deemed constitutional. Second, policy entrepreneurs are adept at finding lacunas in restrictive constitutions and creating original privatization formulas intended to bypass the restrictions. For instance, in Massachusetts, the constitution does not allow direct government payment to private for-profit schools. This restriction was overcome by allowing for-profit companies to sub-contract with the governing body of charter schools.

A third difference between political systems is political culture. Clearly, it is far easier to describe the differences between the political institutions than those between the cultures. Nevertheless, there is little doubt that significant differences do exist between England, Massachusetts and Texas in this respect.⁵³ Texas is clearly the most conservative of the three political systems and England has a stronger egalitarian ethos than the United States. If privatization of delivery is often associated with a neo-liberal world view, one might expect that in England one would find extensive anti-privatization sentiment, in Texas the general mood would favor privatization while Massachusetts would be somewhere in between on this continuum. The mix of attitudes I witnessed with respect to privatization, however, was surprisingly similar in all three places. In England, recent public opinion surveys indicated that the majority of the public is not opposed, in principle, to private delivery of health services (despite the National Health Service’s allegedly unassailable status). In Texas, most Texans believe that schools should remain public. It appears that fundamental beliefs about the appropriate goals and extent of

⁵³ As I mentioned before, there is significant overlap between political culture and political ideology. I will address this in more detail in the third chapter.

government do not straightforwardly translate into stands for and against privatization of delivery.

As will be elaborated in the chapter dedicated to the comparison of political systems, there are important differences between political systems that do have an effect on the development of privatization. These differences, however, have not significantly determined the incidence and extent of privatization.

Policy domains

There are two dimensions relevant to privatization on which policy domains vary. First, large policy domains – that is domains that involve many stakeholders (clients, professional and ancillary workers, and unions) – create very different privatization dynamics than small domains.⁵⁴ Second, institutionally stable domains are different from policy domains that are undergoing institutional restructuring. I will address these two dimensions in turn.

Why should the size of policy domain have any effect on privatization patterns? The size of the service domain matters because size is one of the main determinants of the stakeholders' political influence. The larger a policy domain, the more extensive and politically significant is opposition to privatization. Politicians who wish to be reelected gauge the size of domain' constituencies and act accordingly. Furthermore, policymakers who want to serve the public interest, often pay more attention to the demands of large constituencies than those of small ones.

⁵⁴ It is more accurate to view this distinction as a continuum rather than a dichotomy of large and small.

Why assume, however, that stakeholders in a large domain would rather fight against privatization than fight for it? One reason is that at least one stakeholder group, public employees, have strong incentives to keep services in the public sector, thus retaining their jobs and benefits. More importantly, however, is the tendency of politicians to be more cautious when it comes to large policy domains. Estimating accurately the magnitude of the opposition in advance to the implementation of policy is almost impossible, so most politicians would prefer “playing it safe” to making any radical change that could cost them dearly. The main implication of this line of reasoning is not that large domains will not experience any privatization or even that large service domains would be dominated by public sector provision. Rather, that privatization in a large domain will tend to be less extensive and proceed slower, with more reversals, than privatization in a smaller domain. If private provision, however, dominates the current status quo, as is the case in American healthcare, for example, it would be as difficult to shift to public provision, as it would be to privatize a large domain’s public sector services (e.g., the National Health Service in England).

This fundamental difference between large and small service domains creates a bifurcation of privatization dynamics. This bifurcation begins with the justifications presented for privatization in large and small domains. In small domains, cost-containment, i.e., a concern with keeping service costs down, is a central justification for privatization. In large domains, in contrast, policymakers rarely invoke cost containment as a reason for privatization. This is surprising given the fact that, at least on the face of

it, large domains offer more opportunities for cost cuts than small domains, because larger budgets create more potential for savings than small budgets. However, as I argue in chapter 4, stakeholders resent talk of cost containment, and by presenting this justification in a large domain, policymakers are provoking a great deal of resentment. It is difficult enough for policymakers to make a case for cost containment, let alone budget cuts, in a large domains, without adding to it the stakeholder' consternation that is independently associated with privatization. Thus, policymakers, in large domains, prefer to separate the one – cost containment – from the other – privatization. In small domains, because stakeholder opposition is of less significance, policymakers are able to justify privatization as a cost-saving measure.

A related difference between large and small domains has to do with the budgetary backdrop of privatization. In small domains, privatization is often pursued as a cost-containment strategy, and cost containment measures are most urgent during a budgetary crisis. Thus, privatization in small domains often occurs during rough economic times for the government. In large domains, in contrast, privatization during a budgetary crisis is rare. Privatization of delivery during a budgetary crisis implies that retaining existing public providers along side new private providers is impossible, because there is no new money available to support such growth. Hence, privatization, during a budgetary crisis, must take the form of substituting public providers (not necessarily all public providers) with private providers. Politically, this is a much more contentious form of privatization than privatization by addition of new providers, because it leads to public sector layoffs and, sometimes, the closure of public sector institutions that serve a significant

constituency. The opposition to privatization, in such a case, is very intense, so policymakers tend to avoid privatization by substitution in large domains. Therefore, privatization in large domains tends to take the form of privatization by addition and takes place during budget expansion.

The difference between large and small domains does not end there. Large and small domains also differ in the effect of other environmental factors. In large domains, as mentioned above, extensive straightforward privatization will not happen because of real or anticipated opposition. Nevertheless, privatization can proceed gradually by the use of three strategies: quasi-privatization, privatization from periphery to core, and crafted speech.

First, privatization is easier when policymakers are able to present a service as public, despite deep involvement of private bodies in its provision. This type of privatization, I call quasi-privatization. All across the United States, for example, the public's attitude towards charter schools is generally favorable while their attitude towards voucher programs is generally negative. Not surprisingly, many more states managed to establish charter schools than voucher programs. The positive image of charter schools relies on their status as public schools, despite the fact that for-profit firms manage many of these schools. By keeping privately run charter schools in the public sector, privatization of delivery in education becomes more politically practical.

Second, privatization in large domains is easier when it focuses on ancillary services – the periphery of the service as it were – than on the core services provided to the recipients. Service recipients are not as worried about the privatization of domain’ functions that are not considered to be an integral part of the domain’s central mission.

Third, privatization can be obfuscated – or at least some policymakers tend to think this is the case – if politicians avoid the use of certain sensitive terms when they discuss the policy publicly. To begin with, it is better not to mention the word ‘privatization’ and instead think up new terms that are not as politically loaded. Recently, policymakers have also invented new terms to replace the much-maligned term ‘vouchers’.

In small domains, extensive and rapid privatization is possible and it is facilitated by the following environmental factors: cost-containment opportunities, the prior existence of private providers, and a spike in the demand for a service. The second factor – prior existence of private providers – appears to have some relevance to large domains as well.

First, privatization can cut costs for a public agency either by taking advantage of: a) lower private sector costs when compared to public costs, or b) opportunities to shift costs to another government agency. The most common justification for privatization in small domains is cost containment. Opportunities for cost containment make privatization attractive to policy makers. The private sector often offers a lower cost for the service, more often than not, because private sector workers earn, on average, less than their public counterparts and their benefits are also less generous. Cost shifting from one

government agency to another is also a form of cost containment for agencies, albeit a rather perverse method because the total costs for government in its entirety are not reduced, just redistributed. The NHS, for example, moved some of its long-term patients, during the 1980s, to private residential homes in order to get these patients shifted from its budget to the social security budget.

Second, the existence of private sector providers prior to privatization can facilitate the process in two ways. First, private providers could affect outcomes by creating a political lobby for privatization. Second, the very existence of private providers plays an important function in assuring policymakers that the private sector has the capacity to take on publicly funded provision. Policymakers want to know that they are not going through the political minefield that is privatization, only to find after they pass the necessary legislation that the supply side is simply not there.

Third, the logic of the greater ease of privatization by addition applies to small policy domains, although to a lesser extent than large domains. Thus, it is easier to privatize by addition, during a budgetary expansion, than by substitution. Nevertheless, in the case of small domains, policymakers have a strong incentive to privatize during budgetary contractions to achieve cost containment, as explained above. Privatization by addition, however, is also possible under different circumstances. Sometimes there is a spike in demand for a service and the government is forced to respond by expanding the supply. This type of situation creates a good opportunity for privatization by addition. Much of

the privatization of incarceration took place under such a condition: a sudden spike in demand.

Institutional stability

In both small and large domains, institutional restructuring, due to reasons other than privatization, can create a window of opportunity for privatization. Institutional restructuring creates opportunities in at least three ways. First, it weakens stakeholders that are potential opponents of privatization. The power of vested interests to a large degree depends on their position in the system. Institutional restructuring often weakens unions, among the central opponents of privatization, and as a result, the privatization drive faces less opposition.

Second, institutional restructuring packs the agenda for defenders of the status quo. Privatization becomes just one of several issues that the opposition to restructuring is fighting against, and it may not be the highest priority. If privatization, counterfactually, were proposed as a single institutional reform, the opposition could concentrate all of its attention on defeating it. Thus, teacher unions in Massachusetts did not like the idea of charter schools when it was initially proposed in 1993, but they were battling on several other fronts at the same time (e.g., the restructuring of pay scales), so privatization through charter schools faced relatively weak opposition.

Third, privatization can almost go unobserved when it occurs concurrently with a different dramatic institutional change. In English mental health services, for example,

the move from public to private provision corresponded to the closing of public mental health asylums and the transfer of patients to (private) community settings. Most stakeholder attention was focused on de-institutionalization and, as a result, privatization was, to an extent, overlooked.

Third Stage: The policy feedback loop

The third stage in the privatization process takes place some time after the initial privatization legislation has been passed and/or privatization policy has been implemented. In the third stage of privatization, two types of environmental variables influence the privatization trajectory: endogenous variables, i.e. variables that are affected themselves by privatization, and exogenous variables.

Endogenous variables and the feedback loop

The implementation of the initial privatization policy changes the policy environment in several ways, something that could lead to a change in the privatization dynamics from the second to the third stage. There are at least two ways in which the third stage differs from the second stage. First, in the third stage decisions regarding future privatization might already be done with reference to an existing privatization experience. Second, privatization in the second stage could influence the identity, relative strength, perceptions and preferred strategies of stakeholders in the third stage. I shall address these two factors in turn.

Policy learning and reevaluation is an important component of the policy process according to much of the policy literature. How does privatization's past performance, in a specific domain, affect privatization?⁵⁵ Once again, the dynamics are different depending on policy domain. In large policy domains, the declared rationale for privatization is to enhance quality and choice and the past performance of private providers is scrutinized closely to evaluate whether they achieved these goals. Thus, in my case studies, the performance of charter schools is closely monitored by the contracting agencies, which make comparisons between the performance of public schools students and charter school students. Such policy evaluation does not always inform new initiatives and is not always promptly conducted. Nevertheless, negative studies could have an adverse effect on privatization as appears to be the case for Texas charter school expansion. The influence of positive reports is less clear.

In small policy domains, the declared rationale for privatization is usually the need to lower costs. Policymakers, therefore, examine whether privatization does lower costs in evaluating the policy. I do not doubt that many proponents of privatization would continue to privatize even if no cost-containment could be demonstrated, perhaps even if privatization increases costs, because of their ideological convictions. Yet lack of evidence of cost-savings would impede further privatization, because pragmatic privatizers would abandon the cause.

⁵⁵ The privatization record, in general, or in domain X, could also affect privatization in domain Y. Several of the principles expounded in this passage apply to this type of privatization as well. It is reasonable to assume that the strongest effect of a specific privatization track record, however, would be on future privatization in the same domain.

A second important variable related to the privatization track record that could determine its future course is whether or not privatized services were the subject of negative media publicity. Charter schools that close their doors in the middle of the school year, inmate deaths or escapes, and abuse of mental patients have all played some role in creating a negative atmosphere around privatization. In this study, I have more frequently come across bad publicity than good publicity for privatization. Furthermore, I have found no evidence that good publicity helps promote the expansion of privatization, but there is some evidence to suggest that bad publicity slows privatization down.

Initial privatization can also alter the identity, strategies, perceptions and relative power of actors involved in the process. While I have not encountered cases in which initial privatization has caused certain actors to be wholly removed from the policy process, there were examples of the opposite: new actors were introduced to the policy process following initial privatization. Primarily, these actors are private providers and investors in private provision that became active participants in the policy domain *only after* the implementation of initial privatization. Private providers are not always active in the second stage, the initial political struggle around privatization, but they are an important force in the third stage. In the case of Massachusetts' charter schools, for example, private companies were not involved in the policy process leading to the initial authorization of charter schools, but in the following rounds, private education companies lobbied the legislature to raise the cap on the number of charter schools. In some cases, private providers and investors do lobby for privatization in the second stage. Nevertheless, investing time and money in lobbying for a risky future market is certainly

not the rule. Once the market already exists and private providers have a tangible stake in it, active lobbying for the expansion of the private share becomes an integral part of the private providers' activities. The activities of private sector lobbies increase the odds for the continued existence of private provision (by blocking initiatives to bring back all services to the public sector) and for future expansion of privatization. This is not to say that the private lobby cannot be overcome and privatization cannot be reversed. The private lobby, however, does become a force to be reckoned with once it is entrenched in the system as a vested interest.

Some actors might also change their strategies following the implementation of privatization in the second stage. In this study, the main example of this are unions that initially oppose privatization, but once it is already implemented they implicitly accept it and channel their efforts towards improving the lot of workers in the new system and unionizing private sector workers.

Initial privatization could also alter certain actor's perception of privatization and change their behavior in the third stage. This change in perception could come about because the reality of private provision differs significantly, for better or worse, from the actor's initial expectations. For example, the Labour Party opposed the privatization of prisons vehemently during conservative rule, but once in office, after a close examination of the existing private prisons, they decided that privatization was not such a bad idea after all. Consequentially, Labour expanded prison privatization instead of rolling it back.

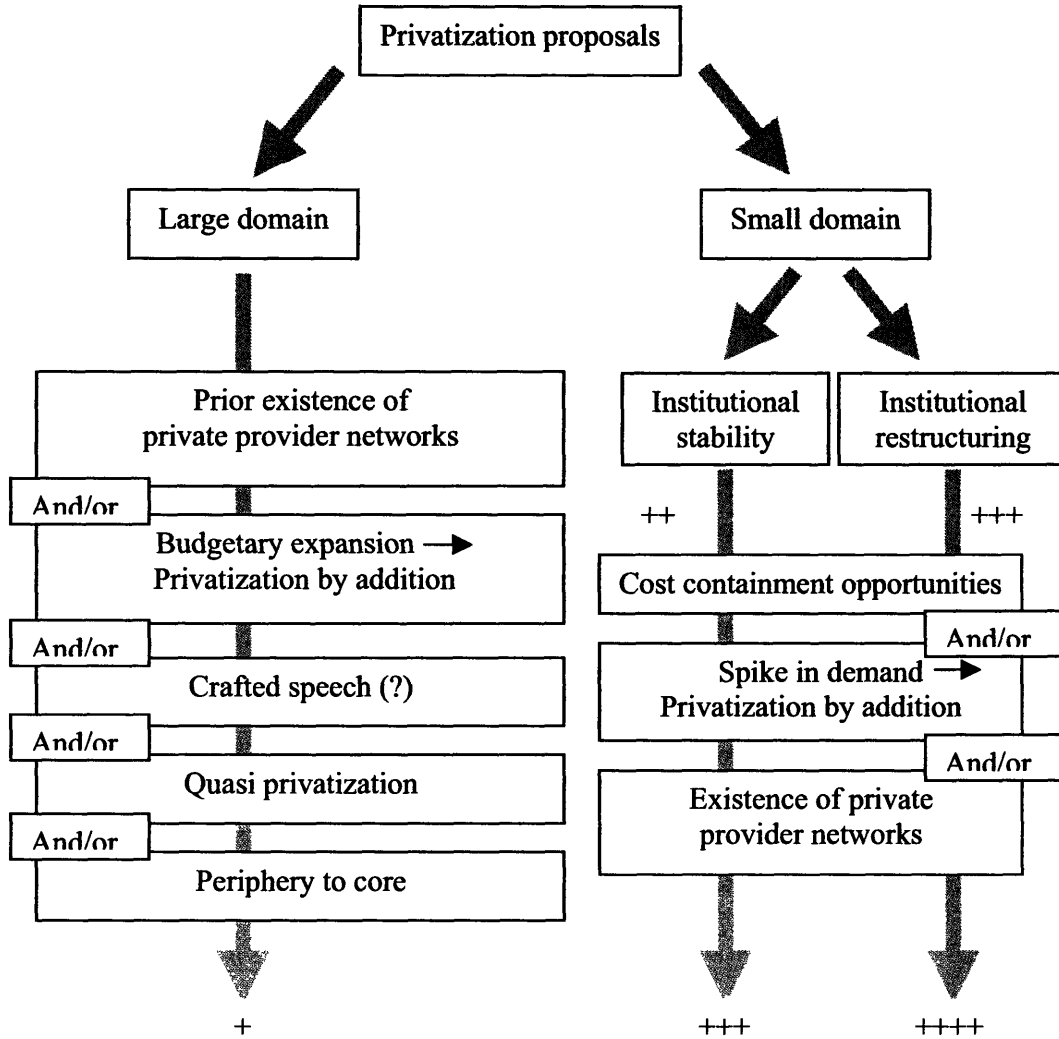
Finally, privatization could shift the balance of power between different actors. One clear instance of this is the weakening of unions following privatization. Privatization moves jobs from the highly unionized public sector to the sparsely unionized private sector. As a result, unions lose membership and influence in certain venues. Private sector contractors, conversely, gain power with privatization.

Three out of four potential changes related to actors in the privatization process – change in identity, strategies, and relative power – appear to facilitate the further expansion of privatization. This might suggest that, with time, privatization of delivery would expand with greater ease.

Conclusion

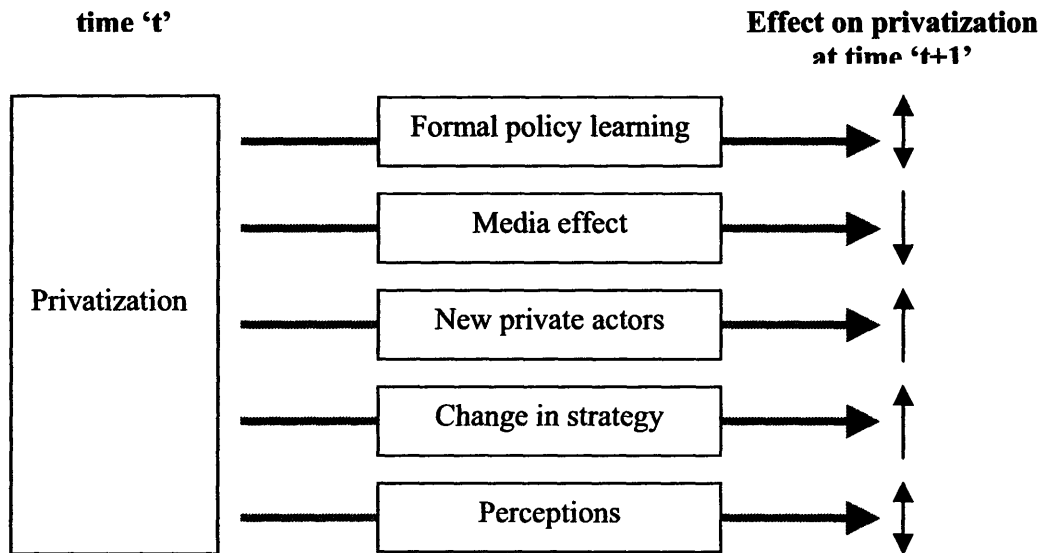
The privatization process is complex and whether privatization will take place, be expanded, slowed down, or even reversed, depends on multiple variables (see figure 1-3 and 1-4). In the discussion above, I have created the basis for a better understanding of how the different explanatory variables relate to privatization of service delivery.

Figure 1-3: The second stage of the privatization process



The number of '+' marks indicates the extent of privatization. One + mark denotes a low level of privatization, while four + marks denote extensive privatization. The figure is a stylized illustration of the second stage. Hence, the number of + marks should not be understood to stand for quantifiable measures of privatization.

Figure 1-4: The third stage of the privatization process



Privatization of delivery is never effortless. It usually faces opposition and a political struggle is eminent. Therefore, in order to understand the outcomes of the process one should look first and foremost at the strength of the opposition and the factors that affect opposition strength. The size of the policy domain has emerged as probably the most important variable in determining the trajectory and outcome of privatization.

Privatization will do better in small domains, where the opposition is weaker, than in large policy domains. Large and small domains also differ in other ways. The declared rationale for most privatizations in large service domains is to improve quality and expand choice while in small domains it is cost-containment. Related to this is the fact that privatization in large domains tends to occur during a budget expansion and not a budget crisis as is often (but not always) the case in small domains. In large domains, privatization of delivery involves government use of methods to obfuscate privatization

and weaken the opposition to it: quasi-privatizations, privatization of the service periphery and not the core, and rhetorical obfuscation of privatization.

A second important variable is institutional stability. Policy domains that experience significant institutional restructuring (that is not directly related to privatization) are more amenable to privatization than institutionally stable policy domains.

Surprisingly, I have not found that differences between political systems – fragmented vs. unitary systems, variance in constitutional constraints and political culture – have a major effect on the extent of privatization in my study. This finding's significance goes beyond the privatization literature. Clearly, there is a need for a reevaluation and modification of the comparative institution theories (e.g., veto point theory), in light of this finding.

Finally, the expansion of privatization, following initial privatization, is influenced by prior privatization in a policy feedback loop and by changes in exogenous variables.

Privatization's past performance, with respect to its ability to improve quality (in large domains), cut costs (small domains) is an important variable in determining its future.

Privatization also affects the identity, perceptions, strategies and relative power of actors, usually in a way that facilitates its further growth.

Chapter 2: Privatization – Nine Case Studies

In this chapter, I recount the story of privatization in the nine case studies with as little analysis as possible. The goal of this chapter is to provide the reader with the background necessary for understanding the comparative analysis of the case studies in subsequent chapters. The case study narratives include a description of the general contours of privatization, major privatization events (and nonevents), and a description of the forces that have promoted or opposed privatization in each case study.

Massachusetts mental health

General contours and figures

In 2004, the Massachusetts public mental health system relies on a mix of public and private delivery. Private delivery, however, is by far more prevalent. In 1998, 58% of the Department of Mental Health Budget was used for purchase of service contracts and this figure has increased in the last six years.⁵⁶ Three decades ago, the majority of publicly funded mental health patients in Massachusetts were in state psychiatric hospitals. Today, only about 700 patients are left in three hospitals while the great majority of seriously mentally ill adults, over 90% of the population, receive treatment in community settings that are in most cases run by nonprofits.⁵⁷ Finally, in the late 1970s the great majority of workers in the mental health field were public employees, by 1998 however, 7,455 of 12,242 Full Time Employees, over 60%, belonged to the private sector.⁵⁸ Private delivery

⁵⁶ Massachusetts Department of Mental Health, "Facts and Figures," 19 January, 1998.

⁵⁷ Seavey (1999).

⁵⁸ Seavey (1999).

dominance in mental health care is a relatively recent development. Until the late 1960s, the state was the sole provider of publicly funded healthcare. A privatization process that spanned three decades changed this situation from end to end.

The Mental health asylum and de-institutionalization

Massachusetts established the first public mental health asylum system in the country, and it remained largely unchanged until the 1960s. The stimulus for change came from the federal government. First, a 1961 Congress sponsored report, *Action for Mental Health*, called for the end of the large mental health hospitals and the creation of community mental health centers.⁵⁹ President Kennedy acted on the recommendations of the report and in 1963 he got Congress to enact the Community Mental Health Centers Act. The federal government envisioned the creation of about 2000 CMHC nation-wide but funding problems plagued implementation of the act from the very beginning. By 1967 there were only 200 community mental health centers in the country.⁶⁰ Nevertheless, the federal government provided funding, and more importantly, set the tone for what was to be a revolutionary change in the American mental health system, Massachusetts included.

The second federal action to set the stage for the subsequent transformation of the Massachusetts delivery system was in 1967, an amendment to the Social Security Act, Title XX, allowed for the first time government purchase (federal and state) of services from private providers (nonprofits and proprietary firms). Further legislation at the end of

⁵⁹ Richard A. Hogarty, "Downsizing the Massachusetts Mental Health System: The Politics of Evasion," *New England Journal of Public Policy*, Vol. 12, 1 (Fall/Winter 1996): 24.

⁶⁰ Dorwart and Epstein (1993).

the 1960s and the early 1970s moved from allowing contracting with private agencies to encouraging it. Nearly all restrictive language was dropped from rules regarding Purchase of Service. Contracting with private providers was extensively used from the start in healthcare where both the new Medicare and Medicaid programs were implemented through purchase of services.⁶¹

Change on the institutional level was proceeding slowly, yet there was certainly a change of mindset among mental health professionals. The professional philosophy of de-institutionalization was taking hold and young professionals out of college were searching for opportunities to implement community care and at the same time disassociate from what they viewed as the failed mental health establishment. On this backdrop new nonprofit organizations emerged geared towards serving the mentally ill in the community.

It was in the 1970s, however, in which de-institutionalization in Massachusetts really took off and with it privatization. From the mid-1970s, the State began closing down mental health hospitals. This development was guided by the philosophy of the de-institutionalization movement that called for moving the mentally ill back to the community in order to reintegrate them into society.⁶² A second important reason for moving patients out of hospitals and into community settings was the relatively lower costs of community care, something that had significant appeal in a state that was running

⁶¹ Massachusetts Taxpayers Foundation, "Reforming the Commonwealth's \$2 Billion Purchase of Human Services," (September 2003): 7-10.

⁶² Interview with Jim J. Callahan, former Massachusetts Mental Health Commissioner, 27 November, 2002; Phone Interview with Eileen Elias, former Massachusetts Mental Health Commissioner, 28 February, 2003.

the largest budget deficit in the country in the mid-1970s.⁶³ From a population of close to 23,000 patients at the end of the 1950s, the state in-patient mentally ill population decreased to around 6,000 by 1990.⁶⁴ Many of these patients were placed in community settings. Community settings consisted of publicly run Community Mental Health Centers, clinics, residential homes and other housing arrangements. The latter two types of arrangements were usually private. As a result, the share of patients treated in the community grew and with it the share of publicly funded patients treated by private sector organizations.

The move from public to private delivery during the 1970s and 1980s was implemented by Democratic administrations cooperating with Democratic legislatures. In theory, de-institutionalization (in the 1970s and 1980s) could have involved moving patients from state hospitals to state-provided community settings but the government was eager to take advantage of nonprofit resources and the greater institutional flexibility that the nonprofit sector offered.⁶⁵ A series of lawsuits, most notably *Brewster v. Dukakis* (1976), also obligated the state to guarantee patients the “least restrictive settings” which often was understood to mean a community setting.⁶⁶ Furthermore, among the professional community a strong sense prevailed that state provision has failed and in order to break with the past there was a need to abandon state delivery.⁶⁷ The closing of the mental health hospitals (four hospitals were closed during the 1970s) did lead to rapid growth of

⁶³ Hogarty (1996).

⁶⁴ Hogarty (1996): 3; Report of the Governor’s Special Commission on Consolidation of Health and Human Services Institutional Facilities, “Actions for Quality Care,” June 1991.

⁶⁵ Stanley Rosenberg, Massachusetts State Senator, January 14, 2003; Sara S. Bachman, “Contracting for Mental Health Services: Six State Experiences,” (Ph.D. dissertation, Brandeis University, 1994), 138-142.

⁶⁶ Hogarty (1996): 29.

⁶⁷ Callahan interview; Anne Umana, former Director of Tri-City Mental Health and Mental Retardation Center, November 11, 2003.

nonprofit organizations that absorbed many of the released patients. Yet, there was to be no clean break. The state had to address two problems: what to do about the state employees who worked in the mental asylums scheduled for closing and how to guarantee that there will be sufficient capacity in community care to absorb the mass of new patients. The solution was the partnership clinic model. State workers would be transferred to work, *as public workers*, in nonprofit clinics. This arrangement weakened union opposition to hospital closing and it upgraded the capacity of nonprofit community providers at the same time. Thousands of state workers joined private clinics under this arrangement.⁶⁸ There were also a few public community mental health centers established and a number of public residential arrangements but these were exceptions and not the rule.⁶⁹ In terms of privatization, de-institutionalization led to a growth in the nonprofit sector without a real decline in the public sector. The overall effect, nevertheless, was a growth in the share of private delivery.

Governor Michael Dukakis was concerned that de-institutionalization would lead to homelessness because of lost public capacity. Therefore, during his eight year stint in office, during the 1980s, there were no further hospital closures. This, however, did not mean any further de-institutionalization or privatization. The good economic times that Massachusetts experienced in the 1980s benefited community care. Dukakis poured new money into government programs, community care for the mentally ill included. The existing hospitals were losing their patients to the community although the decline in the

⁶⁸ Betty Funk, President of Mental Health and Substance Abuse Corporations of Massachusetts. September 29, 2003.

⁶⁹ Perry Trilling, Massachusetts Department of Mental Health, Assistant Commissioner for Administration and Finance, April 24, 2003.

workforce was much slower.⁷⁰ The growth in the mental health budget prevented layoffs something that made privatization easier. As one union leader explained: “under Dukakis we fell asleep despite privatization.”⁷¹ While there was some opposition to government policy, it paled in comparison to the opposition that Governor Weld faced in the next wave of privatization.⁷²

Weld's privatization

Massachusetts suffered from a severe budget deficit in the late 1980s, a crisis that led to a 4% cut in the mental health budget in 1990.⁷³ In 1991, Governor Weld, a Republican, called for further closings of state mental health hospitals. In this move, the Governor was following the recommendations of a Governor Commission's Report, which argued that moving half of the remaining state hospital patients to other settings (i.e., community placements, general hospitals and nursing homes) would allow the closing of four state hospitals. These closings were thought to be cost-effective because the hospitals were at well below full capacity and maintaining the old structures was very expensive.

Furthermore, patients in state hospitals were not entitled to federal Medicaid support. In community placements and in general hospitals (with less than 50% psychiatric patients), in contrast, some patients would receive federal Medicaid funds with matching state Medicaid funds; thus the state could save significant sums of money by shifting costs to

⁷⁰ Callahan interview.

⁷¹ Cliff Cohn, SEIU local 509, February 28, 2003.

⁷² Cohn Interview; Trilling Interview.

⁷³ Ross Gelbspan, “Mental Health Services Shrinking,” *Boston Globe*, 4 November 1990.

the federal government through privatization. The committee also explicitly viewed this plan as privatization and endorsed it as such.⁷⁴

Weld was no stranger to the idea of privatization. In 1991, he convened a national “privatization summit” and later composed a memo regarding privatization criteria that was circulated among government departments. In May 1992, Weld created a new position – “director of privatization” – within the executive office of administration and finance.⁷⁵ Privatization appealed to Weld – a proponent of small government and an avowed opponent of public sector unions – and he was willing to make mental health his first privatization initiative. The administration, in its choice of privatization projects, intended to pick the least controversial services.⁷⁶

The privatization plan did not stop at closing down the four state hospitals and moving the inpatients to privately run community settings. The first move, in fact, was to lay off 1000 state workers who worked in the private partnership clinics. The state allocated an additional budget to the nonprofit organizations that would allow them to rehire the laid-off state workers at around 70%-80% of their original pay. Some thought that the nonprofit clinics would benefit from this move because they would have more control over their workers, as all workers would be direct employees.⁷⁷ The layoffs, however, did not go ahead as planned, in part because of the ability of some of the workers to exercise

⁷⁴ Governor’s Commission, “Actions for Quality Care.”

⁷⁵ Bruce A. Wallin, “The Need for a Privatization Process: Lessons from Development and Implementation,” *Public Administration Review* Vol. 57, 1 (January/February 1997).

⁷⁶ Interview with Shawni Littlehale, former director of Privatization Research in the Weld administration, May 14, 2003.

⁷⁷ Chris Counihan, Independent Managed Care Consultant and former Executive Director of the Massachusetts Alliance for the Mentally Ill, October 13, 2003.

their seniority rights to move elsewhere within the department.⁷⁸ Nevertheless, the administration did eventually phase out the phenomenon of public employees working for private nonprofits in mental health delivery.

Another part of the reorganization of mental health care was to place a private for-profit company in charge of running a system of managed care for acute care services for the mentally ill. Bruce Bullen, the director of Medicaid for the state, came up with the idea to apply private sector managed care to the Medicaid program.⁷⁹ On the one hand, the state wanted to make more use of federal Medicaid dollars by making sure that all DMH patients that are eligible for Medicaid would receive Medicaid funding thus lowering the strain on the DMH budget. On the other hand, there was a sense in the administration that the state was not getting the best deal it could get for its Medicaid dollars because of sub-optimal contracts with private in-patient facilities. The administration thought that a private management company would bring the necessary expertise to shift more DMH patients to Medicaid and at the same time negotiate better contracts with the mental health vendors. After a bidding process that included only two applicants, Mental Health Management of America received the first government contract to run the system in 1992.⁸⁰ DMH and the private company decided on a division of labor in which the managed care system would provide acute health services.⁸¹ The company actually did

⁷⁸ Cohn interview; Elizabeth Neuffer, "Blows Dealt Privatization in House Hailed as State Worker Victory," *Boston Globe*, 24 May, 1991; Andrew Brotman, "Privatization of Mental Health Services: The Massachusetts Experiment," *Journal of Health, Politics, Policy and Law*, Vol. 17, 3 (Fall 1992): 541-551.

⁷⁹ Christopher W. Counihan, Deborah Nelson, and Elizabeth Pattullo, "A Medicaid Mental Health Carve-Out Program: The Massachusetts Experience," *Managed Care Quarterly*, Vol. 4, 3 (Summer 1996) : 93-99.

⁸⁰ James Michel, former Director of Mental Health and Substance Abuse in Massachusetts Division of Medical Aid, October 21, 2003; Counihan interview.

⁸¹ Counihan et al. "A Medicaid Mental Health Carve-Out Program."

manage to lower hospital rates for mental health patients, increase patient accessibility to services and still register a profit.⁸² One ramification of this success was that the novel Massachusetts experiment in managed care became a model for other states, Texas included.

With the closing of four state hospitals and the termination of the partnership clinic model, the greater share of the state's mental health budget was now allocated to the private sector. Most patients were now treated by nonprofits, and a for-profit company administered case management.⁸³

Weld received some support in his privatization effort from practitioners and clients who believed that closing the hospitals was the right thing to do both financially and professionally. The mental health community, including both clients and practitioners, largely agreed with the de-institutionalization movement's idea of moving patients from the outdated state "warehouses" to community-based arrangements.⁸⁴ Negative past experience – in Massachusetts and elsewhere in the United States – made many, however, wary of the proposed transition. Fears of patients being moved around from place to place, moved to a location far from family or even being left out on the street due to lack of community residence, caused many to oppose the administration's policy.⁸⁵ The largest mental health advocacy group, The Massachusetts Alliance for the Mentally

⁸² Counihan interview; Elias interview; Michel interview.

⁸³ Trilling interview; Massachusetts Department of Mental Health, "Department of Mental Health Facts and Figures."

⁸⁴ Interview with Dow A. Wieman, Senior Research Associate at the Human Services Research Institute, January 9, 2003; Interview with Andrew Brotman, Vice Dean for Hospital and Clinical Affairs, New York University School of Medicine, January 14, 2003.

⁸⁵ Marie Parente, Massachusetts State Representative, March 18, 2003; Trilling interview; Hogarty (1996).

Ill, opposed Weld's policy, as did homeless advocates and some parent groups.⁸⁶ General hospitals, which had spare capacity at the time, and private providers, were set to gain from privatization. These organizations, however, were relatively weak and had little influence over policy formation.⁸⁷ The introduction of the Medicaid carve out program managed by a for-profit was also the focus of widespread criticism. Critics argued that introducing a for-profit management company into the system would simply transfer much needed money from services to the company's shareholders by limiting patient usage of the system.⁸⁸ The use of a private company to run the managed care system was also criticized from within the DMH and the Division of Medical Aid that was responsible for overseeing the operation of the system.⁸⁹ In fact, even James Michel, the director of mental health and substance abuse in the Massachusetts Division of Medical Aid, was at first skeptical of the introduction of the private company.⁹⁰

The Democrat-dominated legislature was critical of Weld's privatization initiative, especially representatives from districts with mental health hospitals.⁹¹ Some Democratic legislators feared the loss of public sector jobs in their district. Others worried that Weld's enthusiasm for privatization would lead to the closing of hospitals before alternative arrangements were available, leaving vulnerable patients in the cold. The involvement of the for-profit management company was another reason for concern.

⁸⁶ Callahan interview; Brotman interview; Interview with Susan Fendell, Senior Attorney for Massachusetts Mental Health Legal Advisors, March 13, 2003.

⁸⁷ Cohn interview; Elias interview. See also Linda A. Bergthold, William M. Mercer, Inc. "The Frayed Alliance: Business and Health Care in Massachusetts," (*Journal of Health Politics, Policy and Law*, Vol. 15, 4 (Winter 1990): 915-918) for a more general review of the declining influence of business in Massachusetts Health Care.

⁸⁸ Fendell interview.

⁸⁹ Elias interview; Michel interview.

⁹⁰ Michel interview.

⁹¹ Rosenberg interview; Elias interview; Parente interview.

Critics argued that the company's profits would drain the already inadequate public resources allocated to mental health.⁹²

Despite the opposition, the targets specified in the governor's committee report were fully implemented. The number of employees in the Department of Mental Health was more than halved, from around 8,500 to 4,200; half of the state inpatients were moved out of state hospitals and four state hospitals were closed by 1993.⁹³

The Pacheco bill and beyond

The experience of privatization in mental health motivated key members of the Democratic Party – Chief among them Senator Mark Pacheco – to organize against future privatization' initiatives.⁹⁴ Overriding the governor's veto, the legislature passed the Pacheco bill in 1993; the administration, in order to privatize, was now required to demonstrate that privatization would save at least 10% of costs without compromising service quality and worker pay.⁹⁵ A poll conducted by the Becker Institute suggested that 64% of the public supported the legislation, with only 25% opposed.⁹⁶ According to Senator Pacheco, this public support facilitated the passing of the bill because legislators felt that by supporting the bill they were expressing their constituencies' views on privatization.⁹⁷ This law makes privatization significantly more difficult and has

⁹² Fendell interview; Alison Bass, "Group Hits Contract for Mentally Ill Patients," *Boston Globe*, 19 January, 1996.

⁹³ Trilling interview; Massachusetts Taxpayers' Budget: State Budget 1995, "Department of Mental Health," 25.

⁹⁴ Marc Pacheco, Massachusetts State Senator, March 18, 2004 (phone interview); Littlehale interview; Wallin, "The Need for a Privatization Process,".

⁹⁵ General Laws of Massachusetts, Chapter 7, Sections 52-54.

⁹⁶ Scot Lehigh, "Poll Respondents Warm on Weld Agenda," *Boston Globe*, 16 June, 1993.

⁹⁷ Pacheco interview.

effectively stopped almost all major privatization projects in the state. By the time the bill passed, however, the privatization of mental health delivery was already a foregone fact.

Since 1993 little has changed in the structure of Massachusetts mental health. In April 2003 one more state mental hospital closed its gates but, in any case, there is very little that is public left to privatize (probably less than 10% of mental health patients in the state are treated publicly). Nor is there any serious talk of reverting back to a larger role for the public sector in mental health provision. The Massachusetts mental health system seems to be irreversibly privatized.

Texas Mental health

General contours and figures

In 2003, the Texas 78th legislature passed H.B. 2292 of which section 2.74 states:

“(e) In assembling a network of service providers, a local mental health and mental retardation authority may serve as a provider of services only as a provider of last resort...”.

The practical meaning of this clause is that public Mental Health and Mental Retardation Centers, that currently function as public mental health authorities, would no longer be able to provide a service if there are any potential private providers that are willing to contract for the service. The bill’s implication could very well be radical privatization of the Texas publicly-funded mental health system.

The mental health system in Texas which only a decade was almost wholly public has undergone rapid change in the last few years. Local mental health authorities have for the

first time been prodded, through legislation, to engage in contracting out of services. This had led to an expansion of private provision in several counties. Furthermore, in one large scale program the public local authority has been replaced in its management role by a for-profit Behavioral Health Organization. One repercussion of this substitution was the vastly increased use of private providers in the delivery of community mental health services. The share of the budget allocated to private provider networks grew from just over 10% in 2000 to 40% in 2003.⁹⁸ Finally, the aforementioned 2003 legislation has put into question the future of public provision of community mental health and has also opened the door to the privatization of a mental health hospital.

Exact figures measuring the present extent of publicly funded private provision in Texas mental health care are unavailable.⁹⁹ The variation between different regions appears to be quite considerable; contracting out is far more prevalent in large urban areas than in rural areas. Nevertheless, mental health privatization in recent years has been extensive and is set to expand much further.

⁹⁸ Texas Department of Mental Health and Mental Retardation, "NorthSTAR SPN Market Share Tables" compiled by Matthew Ferrera (2004).

⁹⁹ The Texas mental health system is decentralized. Local authorities do not provide the Texas Department of Mental Health and Mental Retardation with information about their contracting out practices (Mike Maples, Texas Department of Mental Health and Mental Retardation, January 15, 2004). In fact, authorities do not systematically gather data on contracting out and do not calculate the private share in their operations (Danette Castle, Chief Executive Officer of Lubbock Regional Community Mental Health and Mental Retardation Center (Texas), April 28, 2004 (phone interview)). One Community Mental Health and Mental Retardation Center director was willing to say that while private providers still served only a minority of patients and received a smaller share of the budget than the public providers, there were already more private providers than public ones (David Evans, Executive Director of Travis County Mental Health and Mental Retardation Center (Texas), January 21, 2004.) Another director indicated that at least some functions of the center have been effectively privatized in the last few years (Jim McDermott, CEO of Tarrant County Community Mental Health and Mental Retardation Center (Texas), May 11, 2004 (phone interview)).

The traditional public system

In the wake of the federal Community Mental Health Centers Act, in 1965, the legislature passed H.B. 3 that established the Texas Department of Mental Health and Mental Retardation and a comprehensive system of Community Mental Health and Mental Retardation Centers. These centers provided a set of community services (e.g., supported housing, outpatient treatment, and supported employment) in a number of growing locales in the late 1960s and 1970s.¹⁰⁰

The state hospital census declined from 14,921 in 1964, to 8,000 by 1975, and to 2,394 in 2001.¹⁰¹ The decline in the number of patients, however, did not bring about closing of hospitals or even significant layoffs in the public sector. The Texas state hospitals remained open and remained public.¹⁰² The discharge of patients from state hospitals did not, however, imply a corresponding growth in community care. Many hospital patients were discharged and given a ticket back to their home town only to find that no community arrangement existed there to take care of them.¹⁰³ The growth of the public community system was slow and uneven.

In 1974, a class lawsuit *RAJ v. Jones*, changed the landscape of mental health delivery in Texas once again. The lawsuit forced the department to improve and extend its community mental health system.¹⁰⁴ At this point, the state designated the Mental Health

¹⁰⁰ The Handbook of Texas Online, "Mental Health," <http://www.tsha.utexas.edu/handbook/online/>.

¹⁰¹ The Handbook of Texas Online, "Mental Health,"; TXDMHMR Strategic Plan: Fiscal Years 2003-2007, May 2002.

¹⁰² Dr. Ira Iscoe (Texas), January 23, 2004; King Davis, Director of the Hogg Foundation (Texas), January 21, 2004.

¹⁰³ Stella Mullins and Mary Ellen Nudd, Mental Health Association of Texas, January 19, 2004.

¹⁰⁴ The Handbook of Texas Online, "Mental Health."

and Mental Retardation Centers (MHMRC) as mental health authorities.¹⁰⁵ This meant that the centers were to plan and administer mental health delivery systems in their respective districts. The MHMRC could provide the services themselves or they could find nonprofit or for-profit providers to deliver the services. In almost all cases the services remained public¹⁰⁶ with very little contracting out. This predominant reliance on “in-house” provision stands in stark contrast to what occurred in Massachusetts during the same period in which the growth of community services paralleled the growth of private nonprofit delivery in mental health.

The growth of community care in subsequent years is well captured in the change in the relative share of community care in the mental health budget. In 1986, only 33% of the department’s budget was dedicated to community mental health. By 2002, however, the share jumped to over 61%.¹⁰⁷ Most of this change occurred in the late 1980s.

Nevertheless, the private sector was, by and large, left out.

H.B. 2377

In January 1994 the Chair of the Texas Board of Mental Health and Mental Retardation appointed a task force charged with studying the organization, finance and delivery of mental health and mental retardation and making recommendations about future

¹⁰⁵ Sandy Skelton, CEO of the Texas Council of Community Mental Health and Mental Retardation Centers, February 2, 2004 (phone interview).

¹⁰⁶ Legally speaking, the MHMRC are not public entities but 501 (c3) nonprofits. The MHMRC employees, accordingly, are not subject to state labor agreements and the centers are eligible for federal funds that are not available to public entities (David Warner, LBJ School of Public Policy, University of Texas, March 11, 2003 (phone interview); Mullins and Nudd interview; Gantt and McPherson (2002)). The centers, however, are established by the state and are considered “political subdivisions of the state of Texas,” (Texas Department of Mental Health and Mental Retardation, “Frequently Asked Questions,” January 2004).

¹⁰⁷ Bachman (1994); “TXDMHMR Strategic Plan,” (2002).

directions.¹⁰⁸ The demand for such a review originated from organized mental retardation providers that claimed that the MHMRCs' dual role of authority and provider creates a conflict of interest in which the authority is biased toward public provision regardless of the qualities of private providers.¹⁰⁹ The task force's report recommended that a separation of the two roles be effected and this recommendation was incorporated into H.B. 2377 in 1995.

The bill, sponsored by representative Dianne Delisi (R), created several organizational changes, of which one was related to privatization. First, the Texas Board of Mental Health and Mental retardation was authorized to create time-limited pilots in which there would be an "organizational separation between the pilot local mental health or mental retardation authority and service providers."¹¹⁰ The MHMRCs, under this new arrangement, would retain the administrative authority but, as authorities, would distance themselves from the provision function in an attempt to broaden and diversify the provider base.

The bill was discussed in a public hearing in the Public Health Committee and was supported by various mental health advocacy groups (e.g., Texas Association of Mental Health Consumers, the National Alliance for the Mentally Ill) and other organizations. Cynthia Hopkins, the executive director of the Texas Association of Mental Health

¹⁰⁸ Texas H.B. 2377, "House Committee Report: Bill Analysis," 20 April, 1995.

¹⁰⁹ Joe Lovelace, Political Consultant, Texas Alliance for the Mentally Ill, January 13, 2004.

¹¹⁰ H.B. 2377, section 9, 22 May 1995

Consumers, argued that the bill would shake up a system that was not working well by bringing in private providers.¹¹¹ The bill was approved unanimously.

In 1996, the Texas Board of Mental Health and Mental Retardation authorized pilots in three sites: Austin-Travis County, Tarrant County, and Lubbock Regional MHMRCs. Whether the pilots succeeded in implementing H.B. 2377 as intended is debatable. A 1998 report issued by the University of Texas LBJ school, “Community Mental Health Centers Under Managed Care: Authority or Provider?”, claimed that all three sites failed in creating an arms-length relationship between the authority and the provider.¹¹² The directors of the three MHMRCs, however, take issue with this characterization. Directors of the MHMRCs, in all three sites, claim that the bill did bring about a functional separation that resulted in a substantial increase in contracting out and the involvement of private providers in the delivery of services.¹¹³ H.B. 2377 was not intended to be an outright privatization bill but it did increase the share of the private sector in mental health delivery.

NorthSTAR

The concept of NorthSTAR was developed within the Texas Department of Mental Health and Mental Retardation.¹¹⁴ The planners wanted to create a model that would accomplish a number of goals: integrate the delivery of mental health and substance abuse services; blend funding streams in a way that both Medicaid and non-Medicaid

¹¹¹ Cynthia Hopkins, testimony, H.B. 2377 Hearing in Public Health Committee on 19 April, 1995.

¹¹² LBJ School of Public Affairs, University of Texas, “NorthSTAR: A Successful Blended-Funding, Integrated Behavioral Health Carve-out Model,” (September 2003): 10-11

¹¹³ Evans interview, McDermott interview; Castles interview.

¹¹⁴ Maples interview.

populations would be able to receive services under a single system; contract with a Behavioral Health Organization (BHO) that would manage the operation of the system and assume risk for the delivery of services; and create an authority-provider separation.¹¹⁵ The model was by no means novel. Other states, the first being Massachusetts, were by this point in time already operating a managed care model of this type for several years. In order to establish NorthSTAR no new legislation was required just a waiver from the federal government regarding the use of Medicaid funds. Once the waiver was obtained NorthSTAR was established in seven counties in the Dallas area in 1999.

The BHO, Valueoptions, contracts for services with eleven Specialty Provider Networks. The networks provide a range of different services to patients and the patients can choose among the networks that exist in their area. Five of the Specialty Provider Networks are Mental Health and Mental Retardation Centers while six are private entities.¹¹⁶

NorthSTAR achieved privatization in two ways. First, on the management level, the responsibility for the administration of the services was transferred from the public MHMRCs to a for-profit BHO (Valueoptions). Second, the share of private providers in the system increased dramatically. As mentioned above, six of eleven Specialty Provider Networks are private, receiving 40% of the mental health budget in 2003, and the overall involvement of private providers in all aspects of the provision of community care (not institutional care) increased significantly. 'Adapt', a private for-profit company, for

¹¹⁵ "NorthSTAR" (2003): 3.

¹¹⁶ "NorthSTAR," (2003).

example, increased the number of patients it serves from about 100 in 1993 to approximately 3,000 today with almost all the increase occurring under NorthSTAR.¹¹⁷ Beth Epps, the executive director of Adapt in NorthSTAR, attributes the dramatic increase in the company's market share to the difference between the biased approach of MHMRCs to private providers and the open approach of Valueoptions (the BHO).

NorthSTAR, in contrast to H.B. 2377, was viewed as a privatization initiative so, unsurprisingly, it attracted far more criticism.¹¹⁸ First and foremost among its critics were the MHMRCs and their trade association the Texas Council of Community Mental Health and Mental Retardation Centers. The opposition of the MHMRCs, according to a report prepared by researchers in the LBJ school, was motivated by the fact that the centers lost their status of authority, much of their budgets and had to cut back on services.¹¹⁹ The CEO of the Texas Council, Sandy Skelton, however, claimed that the opposition was critical of NorthSTAR because in cases where the mental health budget is so small, profits would necessarily be made at the expense of service quality and access. In fact, Skelton argues, the range of services provided has shrunk under NorthSTAR and, even so, Valueoptions is experiencing financial difficulties.¹²⁰

NorthSTAR is considered by the Texas Department of Mental Health and Mental Retardation, and other bodies, as a success.¹²¹ Nevertheless, there are opponents of NorthSTAR who disagree and have successfully, to date, blocked the expansion of

¹¹⁷ Beth Epps, Executive Director of Adapt (Texas), January 29, 2004 (phone interview).

¹¹⁸ Maples interview.

¹¹⁹ "NorthSTAR," (2003).

¹²⁰ Skelton interview.

¹²¹ Maples interview; Lovelace interview; "NorthSTAR" (2003).

NorthSTAR to neighboring counties, primarily Tarrant County.¹²² The Texas Council of Community Mental Health and Mental Retardation Centers has been instrumental in blocking the proposed expansion. The MHMRCs across Texas have 16,000 employees and 350 board members who are prominent citizens in their communities. This constituency is politically mobilized on the local level creating pressure on legislators to oppose further expansion.¹²³

H.B. 2292 and the future of Texas mental health privatization

In 2003, the legislature faced a \$10 billion deficit and sought ways of erasing the deficit without raising taxes.¹²⁴ The 2003 legislature was different from any previous Texas legislature in its composition; Republicans had a majority in both houses. Furthermore, the governor, Rick Perry, is a Republican who, in general, endorses privatization policies. This is the backdrop on which the struggle over H.B. 2992 took place.

H.B. 2992, sponsored by representative Arlene Wohlgemuth (R), authorized a massive reorganization of Health and Human Services that would eliminate the Department of Mental Health and Mental Retardation. The bill touched upon various human services. The mental health component of the bill tightened eligibility for services and authorized two privatization initiatives. First, as quoted at the start of this section, section 2.74 prohibited mental health authorities (almost always MHMRCs in Texas) to provide a service as long as there is some other entity willing to provide the service. Authorities can

¹²² Maples interview; McDermott interview.

¹²³ Skelton interview; Maples interview.

¹²⁴ "Mental Health: Promised state funds only cushion larger cuts' blow," *The Houston Chronicle*, 23 October, 2003.

serve as providers only as a last resort. Second, section 2.78 authorized the privatization of one state mental hospital if a bidder could be found that would provide campus service of similar quality but for at least 25% of the cost.

The two privatization sections were not part of the bill introduced by Representative Wohlgemuth. Both sections were introduced as amendments to the bill during the debate in the House and did not attract any initial attention or objections. Representative John Davis (R) authored the hospital amendment. The main motivation for the bill was to cut costs and privatization was a means to an end.¹²⁵ Talmadge Heflin (R), the chair of the Appropriations Committee, proposed the last resort amendment to H.B. 2292. Heflin was approached by private mental retardation providers who were allegedly frustrated by the biased practices of MHMRCs in contracting out services. The “Last resort” amendment, as was true of H.B. 2377 in 1995, was intended to address the problem of conflict of interests inherent in the dual roles of MHMRCs.¹²⁶ A second goal of the amendment was to create greater choice for patients.¹²⁷ Whether or not this was the true intention of the bill, it was clear that the amendment would lead to privatization. Interestingly, Heflin claims that it was not his intention that the amendment would apply to mental health care. The amendment was intended specifically for mental retardation services but the general wording of the amendment made it equally applicable to mental health.¹²⁸

¹²⁵ Julie Haeber, Texas State Representative John Davis’s Chief of Staff, January 23, 2004.

¹²⁶ Talmadge Heflin, Chair of Texas House Appropriations Committee, February 10, 2004 (phone interview).

¹²⁷ Talmadge Heflin, “Provider of Last Resort Explanation,” Internal Legislature Document.

¹²⁸ Heflin interview.

The opposition to the bill was considerable but it mostly focused on the bill's organizational components and the tightening of eligibility – not on the two privatization amendments. The Senate Finance Committee discussed H.B. 2292 for over ten hours on May 22nd and May 23rd, 2003 with few references to the two privatization amendments. The fate of the two amendments was significantly different. The “last resort” amendment was included in the enrolled version of the bill (basically the final version) very much unchanged. The “hospital privatization” amendment, however, suffered a major blow. Davis’s amendment required a 10% cost savings through privatization. The figure was changed in the enrolled version to 25%. Davis knew that this would make privatization all but impossible: achieving 25% cost savings in what was already a money-strapped environment is an unattainable goal. This, however, appears to be exactly what the adjustment was supposed to do. Legislators who had mental health institutions in their district were not going to approve an amendment that might have led to the closing down of a large employer in their district.¹²⁹ While the hospital privatization amendment was ultimately incorporated into the enrolled version, the 25% cost-savings requirement made it meaningless from a practical point of view.

H.B. 2292 was passed in the Senate on May 31st and one day later in the House. In both cases the voting was on partisan lines, Republicans in support and Democrats opposed, with only a handful of legislators from either party crossed party lines.¹³⁰

¹²⁹ Haeber interview.

¹³⁰ Two Democratic senators and three Democratic representatives voted for the bill. Two Republican representatives voted against it (Texas House Journal — 84th Day, 6514, Sunday, June 1, 2003)

The fact that there was little discussion of either amendment before the bill passed indicates that the focus of the opposition was elsewhere, but this does not imply that the amendments did not have their supporters and opponents.¹³¹ Almost all mental health advocacy groups take issue with the “last resort” amendment. Among these groups the Mental Health Association of Texas is the most influential and its representatives voiced their concerns to legislators.¹³² The Texas Council of Community Mental Health and Mental Retardation Centers is concerned that the Heflin bill would undermine the public safety net and that private providers would find it difficult to attract local government funding and local business donations, something that MHMRCs have been able to do. The unions, especially TSEU which represents public workers in the mental health field, opposed the amendment because it privatizes government services.¹³³

The most notable organization to support the bill in its entirety was the Texas National Alliance of the Mentally Ill (NAMI). The leaders of the organization believed that a major restructuring would allow important professional changes.¹³⁴ Mental Health private providers were set to benefit from the “last resort” amendment, yet played no role in formulating or promoting the bill. The fact that these organizations do not have a trade association goes a long way in explaining their passivity. As mentioned before, the mental retardation providers did play a role in promoting the “last resort” amendment. It was unnecessary for them, however, to pressure legislators into accepting the amendment for the simple fact that no specific political resistance was mounted against the

¹³¹ Eliot Shapleigh, Texas State Senator, February 4, 2004 (phone interview).

¹³² Melanie Gantt, Public Policy Director for Mental Health Association of Texas, December 19, 2003 (phone interview).

¹³³ Jim Branson, Texas State Employee Union (TSEU), January 16, 2004.

¹³⁴ Lovelace interview.

amendment. H.B. 2292 packed the agenda with several proposals that were more controversial than the “last resort” amendment allowing the amendment to pass without too much attention.¹³⁵

The effect of the amendment, if implemented, would be profound. One possibility is that the MHMRCs would forego their role as authorities and in that way would be able to retain their provision functions. This, however, does not mean that they would not lose a considerable share of the market to private providers. The considerable decline in public provision following the reassignment of the authority role in NorthSTAR suggests that the MHMRCs definitely would lose much ground to the private sector. The second option would be for the MHMRC to retain their authority role. In such a case, the change of the delivery mix would be even more dramatic because MHMRCs would be prohibited from delivering services as long as a private provider could be found. The “hospital privatization amendment, in contrast, is unlikely to lead to any further privatization because of the very high hurdle of 25% required savings. Not one company turned in a bid to operate a mental health hospital by the state-imposed deadline.¹³⁶

Although privatization of mental health hospitals is not on the horizon, privatization of community care provision, which serves the vast majority of mental health patients and accounts for almost two thirds of the budget, is taking place (in all counties but especially in the NorthSTAR system) and is set to accelerate significantly in the next few years.

¹³⁵ Shapsleigh interview.

¹³⁶ David Harmon, “Only one bid to run a mental facility,” *Austin American Statesman*, 14 February 2004.

English mental health

General contours and figures

During the Labour Party's years in government in the 1970s, the future of private delivery in mental health care specifically and healthcare generally appeared to be bleak. The Labour Health Secretary, Barbara Castle, set out to phase out private pay beds in the National Health Service (NHS), thus reducing considerably the private market in general and mental healthcare.¹³⁷ Care in the community was relatively undeveloped during that time and public funding for private delivery was, by and large, unknown.

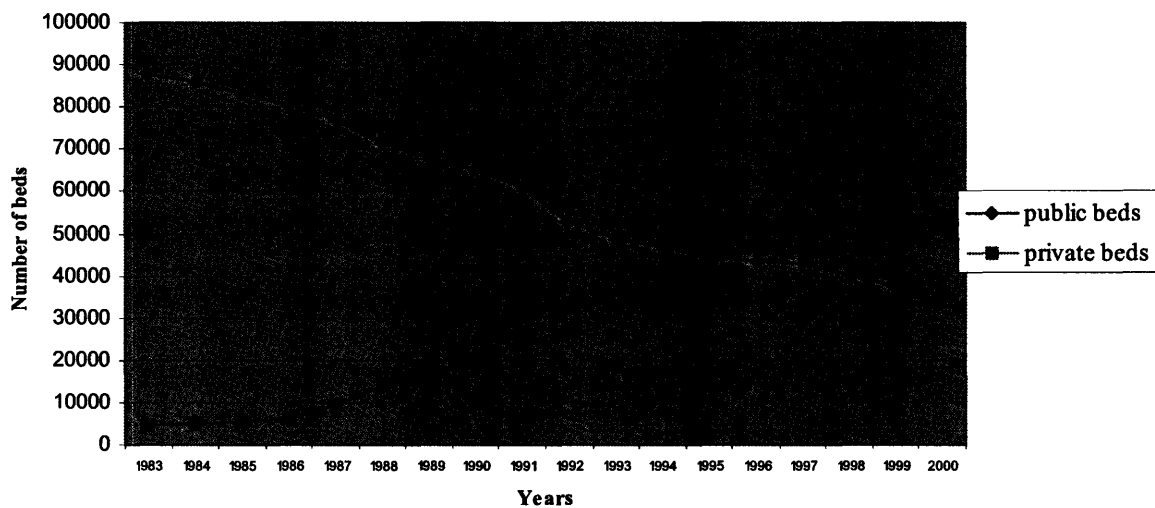
Slightly over two decades later the situation has changed dramatically. In 2001, there were 62,650 private beds for the mentally ill in nursing homes, hospitals and private residential homes (non-profit and for-profit), accounting for 61.4% of all mental health beds in England.¹³⁸ About two-thirds of the private in-patient beds and 94% of private, long term (care in the community), beds are publicly funded.¹³⁹ This shift towards publicly funded yet privately delivered mental health services has been going on for twenty years and is still continuing (see figure 2-1).

¹³⁷ Laing & Buisson, "Laing's Healthcare Market Review: 2001-2002," 73; Disa Young and Sally Taber, Independent Healthcare Association (England), February 10, 2003.

¹³⁸ House of Commons, Select Committee on Health Memoranda, Table 3.5.1 (h), 17 September, 2003.

¹³⁹ "Laing's Healthcare," Table 5.8; Laing & Buisson, "Healthy Private Hospital Market – Though Challenges Lay Ahead," 16 October, 2003, <http://www.laingbuisson.co.uk/laingsreview.htm>, accessed 3 June 2004.

Figure 2-1: Psychiatric beds in England according to sector, 1983-2000



Sources: Hansard, Written Answers, 2 December 1993, Column 693; House of Commons, Select Committee on Health Memoranda, Table 3.5.1 (h), 17 September 2003.

It is more difficult to estimate the share of private delivery in public expenditure on mental health than the share of patients due to paucity of reliable data. One study estimated private delivery's budget share at about 65 percent but most observers believe this figure to be too high.¹⁴⁰ Given the fact that it is still the public sector that deals with the majority of inpatients and the great majority of "difficult" case (high and medium security patients), there is little doubt that the budget share of private providers must be considerably lower than their share of beds. Nevertheless, the private sector is steadily increasing its share of publicly-funded inpatient delivery, the most expensive form of mental health delivery. Private providers account now for a third of medium secure beds in England and the private sector share in the mental health inpatient budget has been

¹⁴⁰ See Institute for Public Policy Research's publication: *Building Better Partnerships* (London: IPPR, 2001): 69 for figure. Simon Lawton-Smith and Gil Hitchon, MACA (England), February 10, 2003; Cliff Prior, Director of Rethink (England), January 30, 2003.

growing rapidly in the last few years, exceeding the growth rate of the private sector in any other health-related sector.¹⁴¹

De-institutionalization

In the 1948 Health Act, the Labour government of the time nationalized the health system and created the National Health Service (NHS), a public universal healthcare program.

Although mental institutions were not explicitly mentioned in the act, they too were nationalized and their administration was transferred to the NHS.¹⁴² The dominant form of treatment at the time was institutionalization and at its peak, in 1954, 148,000 people were institutionalized in mental health hospitals.¹⁴³

Initial attempts at de-institutionalization began during the 1950s, but the big boost for the movement came in 1962 when Enoch Powell, the conservative Health Secretary, made a landmark speech condemning the asylum system and called for a restructuring of the mental health system.¹⁴⁴ During the 1960s and 1970s, the number of patients in the asylums decreased drastically (by 1986 there were only 61,000 patients left in the hospitals) and out of 106 mental hospitals with a hundred or more beds in 1960, 62 had been closed or replaced by March 1994.¹⁴⁵ Despite the closing down of the asylums, however, a system of care in the community did not develop to replace the hospitals

¹⁴¹ Independent Healthcare Association, "Key Global Figures," http://www.ihc.org.uk/main_file.php/sector/151/. Accessed 3 June 2004; "Healthy Private Hospital Market – Though Challenges Lay Ahead,".

¹⁴² Phone Interview with Professor Anne Rogers, National Primary Care Research and Development Centre, University of Manchester, 3 February, 2003.

¹⁴³ Ellen Jane Hollingsworth, "Falling Through the Cracks: Care of the Chronically Mentally Ill in the US, Germany, and the UK," *Journal of Health, Politics, Policy and Law*, Vol. 17, 4 (Winter 1992): 899-928.

¹⁴⁴ Burns interview; Anne Rogers and David Pilgrim, *Mental Health Policy in Britain*, (New York: Palgrave, 2001).

¹⁴⁵ Hansard, "Commons Written Answers," 3 April, 1995.

during the 1970s.¹⁴⁶ Governments during that period did support care in the community in theory, but in practice the budgets for mental health were cut and the system deteriorated. During this period there emerged a plethora of advocacy groups for the mentally ill that advocated for de-institutionalization but their impact was small.¹⁴⁷

De-institutionalization only began in earnest in the 1980s and, as was the case in Massachusetts, de-institutionalization jump-started privatization of delivery. What triggered the dual process was a change in the rules governing social security payments for board and lodging expenses.¹⁴⁸ In 1980, the government passed a statute under which the expenses of lodgers in private residential homes and nursing homes would be fully covered. The government did not cap the amount designated for this purpose and the unexpected result was an incredible growth in social security payments to lodgers. In 1979 only £10 million were dedicated to reimbursement of residential care costs. By 1993, the sum had ballooned to £2.4 billion.¹⁴⁹ Local authorities and hospitals both recognized the uncapped sum as an opportunity to shift costs from their budgets to social security. By moving clients from local authority homes or hospitals to private residential homes they could achieve considerable cost savings. Most of this budget was not dedicated to the care of the mentally ill. Even so, there was a pronounced shift towards more private residential care for the mentally ill.¹⁵⁰

¹⁴⁶ Hollingsworth (1992); Rogers and Pilgrim (2001).

¹⁴⁷ Prior interview.

¹⁴⁸ Jane Lewis and Howard Glennerster, *Implementing the New Community Care*, (Buckingham: Open University Press, 1996): Chapter 1.

¹⁴⁹ Robin Darton, "PSSRU Survey of Residential and Nursing Home Care," *Mental Health Research Review*, Vol. 5 (May 1998): 26-30.

¹⁵⁰ Lawton-Smith and Hitchon interview; Lewis and Glennerster (1996).

The Community Care Act and the 85% rule

Thatcher's government was aware of the cost explosion and in 1989 moved to rein in the costs. Its response was the National Health Service and Community Care Act of 1990. The Act was first and foremost driven by the government's goal to contain costs but it had an important secondary goal as well: to develop the private market in community care.¹⁵¹ The Act replaced the social security funding with a block budget for care in the community that would be managed by the Local Authority Social Service Departments. A previous report and white paper on the matter made it clear that these departments were best equipped, in terms of their expertise, to administer the funding of community care. The last thing, however, Thatcher was willing to allow was growth of the public sector, especially local authorities. Government resolved this problem by ruling that 85% of the transitional grant to local authorities, which lasted for three years, would have to be spent on private sector provision. This way the local authorities would administer services but they would not provide them directly and, instead, it would be the private sector that would grow.¹⁵²

The outcome in the mental health domain was twofold. First, the rate of de-institutionalization increased considerably. Martin Knapp found that the proportion of psychiatric beds provided in hospital settings fell from 91% in 1993 – the year that the Act was first implemented – to less than 44% in 1996.¹⁵³ Second, the proportion of private delivery – nonprofit and for-profit – rose considerably during this period. The

¹⁵¹ Lewis and Glennerster (1996); John Bowis, former Minister responsible for mental health, December 9, 2003 (phone interview).

¹⁵² Lewis and Glennerster (1996).

¹⁵³ Martin Knapp, Angela Hallam, Jennifer Beecham, and Barry Baines, "Private, Voluntary or Public?" *Policy and Politics* Vol. 27, 1(1999): 25-41.

private sector now dominates mental health residential care and this trend is continuing. The transitional grant with the 85% rule was phased out in 1997, but by that time the private sector had captured the lion's share of the residential care market. Residential Allowances replaced the transitional grant; these allowances also pay for residents in private sector homes but not in local authority homes.¹⁵⁴

Hospital privatization

In the last few years the for-profit sector has even gained a foothold in the delivery of mental inpatient care, an area that was considered to be the exclusive domain of the NHS. The for-profit sector is now providing medium (approximately one third of total provision) and low-security psychiatric beds.¹⁵⁵ This recent development is not as much a result of government planning as it is of insufficient NHS capacity.¹⁵⁶ Since the mid-1990s, every time the NHS found itself short on mental health beds it turned to the for-profit sector for overflow beds.¹⁵⁷ The outcome was impressive growth of the private inpatient sector over the last few years that outpaced the growth of the private sector in any other healthcare sector. The private sector revenue in psychiatric hospitals was £381 million in 2002 up from £300 million, a 27% increase, in 2000.¹⁵⁸

¹⁵⁴ Interview with David Joannides, Director of Dorset Social Services and Head of the Committee for Mental Health for the Association of Directors of Social Services, 4 February, 2003. The category of private sector includes both nonprofit organizations (voluntary organizations in British parlance) and for-profit organizations. In the British social policy literature, however, the term private sector often denotes solely for-profit entities.

¹⁵⁵ Young and Taber interview.

¹⁵⁶ Prior interview; Interview with Lawrence Moulin, Deputy Branch Head of Policy and Performance, Department of Health, Mental Health Group, 4 February, 2003.

¹⁵⁷ Moulin interview; Laing Healthcare Market Review; Young & Taber interview.

¹⁵⁸ "Laing's Healthcare Market Review: 158; "Healthy Private Hospital Market,".

The NHS is probably a reluctant privatizer, purchasing private beds simply because the capacity does not exist in the public sector.¹⁵⁹ In theory, the NHS could develop in-house capacity to replace the private sector beds – a scenario that is certainly of some concern to the private sector.¹⁶⁰ The government, however, is not attempting to replace private delivery with new public beds.¹⁶¹ In fact, the Labour government has worked to encourage a long term partnership with the private sector by signing a concordat with the Independent Health Association in 2000.¹⁶² The concordat supports the notion that instead of relying on the private sector to merely supply spillover capacity, the government will seek to incorporate private delivery in long term planning:

“The concordat also signals however, a commitment towards planning the use of private and voluntary health care providers, not only at times of pressure but also on a more proactive longer term basis where this offers demonstrable value for money and high standards for patients. These, like NHS contractual arrangements, can, where appropriate be reflected in Long Term Service Agreements.”¹⁶³

The Independent Health Association, the main trade association for private healthcare providers in Britain, is now represented on different planning committees in the Department of Health, indicating that the government views the private sector as a permanent fixture in healthcare.¹⁶⁴

¹⁵⁹ Moulin interview; Young and Taber interview.

¹⁶⁰ Interview with Lynne Jones, Labour MP and member of All Party Parliamentary Group on Mental Health, 13 February, 2003; Laing’s Healthcare Market Review: 156-157.

¹⁶¹ Interview with Frank Dobson, Labour MP and former Secretary of State for Health, 5 February, 2003.

¹⁶² Department of Health, “For the Benefit of Patients: A Concordat with the Private and Voluntary Health Care Provider Sector,” 2 November, 2000.

¹⁶³ Department of Health (2000): Section 2.4.

¹⁶⁴ Young and Taber interview.

Privatization a non-issue

Privatization of mental health care delivery has differed considerably from the privatization of education in that it never became a major controversial issue on the English public agenda.¹⁶⁵ There are several reasons for this situation. Public provision was discredited in the eyes of some mental health advocacy groups, so they were pleased with privatization.¹⁶⁶ The two most important reasons, however, have to do with de-institutionalization and the lack of public attention to mental health in general. I will discuss the effects of de-institutionalization in greater detail in the chapter dedicated to policy domains. I will conclude with a few words on public attention to mental health.

Privatization of delivery in mental health is not a major issue in English mental health policy, especially not under a Labour government. In a recent debate dedicated to the delivery of mental health care, the issue of private delivery was not even mentioned once. More importantly, perhaps, the chamber during the debate was almost empty indicating the level of political interest in mental health as one MP commented:

“Even today, for this most important debate, there are only seven honorable Members in the Chamber: four Conservatives, one Liberal Democrat and two from the Labour party, including the Minister. I appreciate that time limitations and the fact that we are not considering legislation have something to do with that. Nevertheless, I believe that it indicates that mental health, despite its importance, is undervalued.”¹⁶⁷

The general political indifference to mental health and the scant attention that privatization in this field is receiving suggests that opposition to privatization will remain

¹⁶⁵ Interview with Sandra Gidley, Liberal Democratic MP and member of All Party Parliamentary Group on Mental Health, 23 January, 2003; Phone Interview with Tim Loughton, conservative MP and Mental Health Spokesperson, 3 March, 2003; Jones interview.

¹⁶⁶ Prior interview.

¹⁶⁷ Dr. Julian Lewis (conservative), Hansard, House of Commons Debates, 7 May, 2003.

weak in the foreseeable future. No less importantly, the recent government concordats with the private and voluntary sectors and the favorable stand of the conservative opposition towards private delivery of mental health services indicate that the political will to continue with privatization is broad and robust.¹⁶⁸ Privatization of delivery in English mental health care has still a way to go before it reaches Massachusetts' levels, but it has far surpassed current levels of privatization in education.

Massachusetts education

General contours and figures

Until the 1970s, public education made very little use of private providers and state support for private schools was very limited. In the 1970s, Massachusetts started making use of nonprofit providers in special education following the enactment of Chapter 766 in 1972.¹⁶⁹ Today, the main manifestation of privatization in Massachusetts education is the charter schools. Yet even with the growth of charter schools the share of public education funding allocated to private entities in Massachusetts is only slightly above 1% (up from 0.65% in 1998) if one does not include special education. Today there are about 15,880 students learning in the state's 43 operating charter schools.¹⁷⁰ This number constitutes about 1.5% of the state's student population and it is doubtful whether it will grow much in the near future.

¹⁶⁸ Loughton interview.

¹⁶⁹ Interview with Deborah Blumer, Massachusetts State Representative (Democrat), 16 April, 2003; General Laws of Massachusetts, Chapter 71B, Section 4.

¹⁷⁰ Massachusetts Department of Education, "Charter School History," 29 April 2004.

Vouchers

In 1855, an amendment to the State constitution (Article XVIII) banned all religious establishments, including schools, from receiving state aid.¹⁷¹ The Amendment was broadened in 1918 to include all private schools, religious and non-religious alike. This 150-year-old amendment stands to this very day and constitutes a serious obstacle to the establishment of voucher programs and tax credits for private school tuition.

The “no-aid” amendment was challenged three times in ballot issues put to voters during the 1970s (once) and 1980s (twice) but was defeated each time by a large margin.¹⁷² The ballot issues were initiated by citizens affiliated with parochial schools who wanted to remove the amendment in order to allow parochial and other private schools to receive state aid. The Catholic Church was the strongest supporter of repealing Article XVIII.¹⁷³ The church viewed the repeal of the amendment as both a matter of principle – eradicating a discriminatory policy (the amendment was first introduced as an anti-Catholic measure in 1855) – and as a practical matter. Catholic Schools could no longer rely on the basically free labor of nuns because of their precipitous decline in numbers. Instead, the church had to hire laypersons for a salary making Catholic education far more expensive. In order to maintain the Catholic School system it was necessary to access new resources and state support was high up on the list of possible targets. The

¹⁷¹ The 1855 prohibition on public aid to religious institutions was put forth by the anti-Papist Know-Nothing Party that feared the considerable Catholic immigration.

¹⁷² Scott S. Greenberger, “Hub Voucher Proponents Face a Series of Hurdles,” *Boston Globe*, 26 February, 2001; John McElhenny, “For Candidate Reich, a flip-flop on School Vouchers,” *The Associated Press State & Local Wire* (Boston), 8 February, 2002.

¹⁷³ Muriel Cohen, “Backers, Foes Marshal Forces on State Aid to Private Schools,” *Boston Globe*, 14 October, 1982.

Catholic Church mobilized its forces to change the amendment. The Cardinal of Boston, Bernard Law, asked the 1,100 priests of the Boston Archdiocese to lobby legislators and recruit five parishioners to work with them on the issue.¹⁷⁴

Constitutional amendments require ratification in two consecutive sessions of the Massachusetts legislature and subsequent approval by the people of the state in a referendum. The proponents of repealing the “no aid” amendment were able to push through the change in the legislature. The factor that most contributed to their success in the legislature was the unwavering support of the President of the Senate, William Bulger (D). Bulger, argued that Article XVIII was a stain on the Massachusetts constitution, having been initially conceived as an anti-Catholic law, and as such should be removed.

¹⁷⁵ Bulger’s critics claimed that his real goals were to allow Catholic Schools to enjoy state largesse and to offer White children in Boston a way out of desegregated schools. Whatever the truth about Bulger’s motives, there is little question that he possessed the political will and power to push the proposed change through the legislature. Bulger managed to get the issue on the ballot in both 1982 and 1986.

The proposed change was supported, in 1986, by the Republican candidates for Governor and Lieutenant Governor.¹⁷⁶ The supporters of the repeal also had a strong, although far

¹⁷⁴ James L. Franklin, “Priests Asked to Lobby in School-aid Issue,” 12 April, 1986.

¹⁷⁵ Don Aucoin, “Bulger to Push Again for Parochial School Aid,” 2 December, 1992.

¹⁷⁶ League of Women Voters of Massachusetts, “Election 86’ Voters’ Guide,” *Boston Globe*, 21 October, 1986.

away, ally in the White House. President Ronald Reagan called on Congress to enact a tuition tax credit or a voucher system in the previous year.¹⁷⁷

The opposition, however, was well organized. 24 different organizations were organized under an umbrella organization, established in 1982, called “Citizen for Public Schools”. Teacher unions and other education-related organizations teamed up with civil rights groups such as the League of Women Voters and the ACLU to fight the proposed repeal.¹⁷⁸ The *Boston Globe* published views both in favor and in opposition to the repeal but on the day of the vote the influential newspaper called on voters to vote “no” on the repeal.¹⁷⁹ The economic situation of public schools at the time was difficult. The recent passage of Proposition 2 1/2 in 1980, which created a ceiling of 2.5% of full value on local property tax, created downward pressure on the education budget of many districts. This situation supported the opponents claim that channeling public money to private schools would financially undermine public schools.¹⁸⁰ The arguments against the repeal emphasized the way that public support for private schools would drain scarce resources from the public school system. The opposition to the repeal was strengthened, in 1986, by the support of Governor Michael Dukakis, who saw the repeal as a threat to public education.¹⁸¹ No less importantly, a broad coalition of prominent Protestant Clergy and religious groups, including the Massachusetts Council of Churches, most Jewish organizations, strongly opposed the repeal. These groups were afraid that the repeal

¹⁷⁷ Muriel Cohen, “Other Ways to Pay for Schooling,” *Boston Globe*, 3 March, 1985.

¹⁷⁸ “Backers, Foes...” (1982).

¹⁷⁹ Editorial, “Voting Day,” *Boston Globe*, 2 November, 1982.

¹⁸⁰ Interview with Steve Perla, Parental Alliance for Catholic Education, March 30, 2004; “The Ballot Questions: Private Aid to Private Schools?” *Boston Globe*, 25 October, 1982.

¹⁸¹ League of Women Voters of Massachusetts (1986).

would lead to situations of tension between the state and parochial schools using state money.¹⁸² The Citizens for Public Schools coalition had over a million members in its different member organizations and it had a clear advantage over the proponents of change in terms of the economic resources at their disposal.¹⁸³

The outcome was two landslide victories for the opposition in the two referendums. 62% of voters opposed the amendment repeal in 1982, and 70% in 1986.¹⁸⁴ These unequivocal result suggested that the public in Massachusetts, of which roughly 50% are Catholics, did not want private school vouchers, tax credits or any other major form of public support for private schools. Politically the resounding defeat might have also weakened the stature of the Catholic Church in the legislature.¹⁸⁵

Senate President Bulger, however, was not deterred by the defeat. In 1992, with the support of Governor Weld, Bulger managed to get the General Court to approve an amendment to Article XVIII.¹⁸⁶ Bulger needed to have the amendment approved once more, in 1994, before it could be presented in a referendum. By 1994, however, Bulger was considered a lame duck president. No longer did he have the necessary political leverage to impose his will in the legislature. Citizens for Public Schools sent out letters to legislators reminding them of the margins their district rejected a similar amendment in

¹⁸² James L. Franklin, "Church Groups says Referendums are Misleading, Bad Policy," *Boston Globe*, 9 October, 1986.

¹⁸³ Marilyn Segal, Director of Citizens for Public Schools (Massachusetts), October 19, 2004; Perla interview; Kathleen Kelley, President of Massachusetts Federation of Teachers, November 3, 2003.

¹⁸⁴ Massachusetts Political Almanac, "Ballot Issues," 1983, 1987.

¹⁸⁵ Bruce Mohl, "Church Influence Questioned after Vote," 7 November, 1986.

¹⁸⁶ Massachusetts Political Almanac, 1993.

1986.¹⁸⁷ The outcome was a defeat for the amendment and the issue of public aid to private schools in general, and school vouchers in particular have not been seriously considered in the Massachusetts Legislature since this defeat.¹⁸⁸

The results of past ballot issues indicate that even if the constitutional obstacle is removed by federal decree (i.e., the United States Supreme Court rules that all state laws that prohibit state support to sectarian services are unconstitutional), public opinion and political opposition could still work against the implementation of a school voucher program in Massachusetts. In the last twelve years, Massachusetts has had a Republican governor with a Democratic legislature. Republican governors, from William Weld to Mitt Romney, have voiced support for school choice in general, but their position on vouchers has been more ambiguous. In his successful gubernatorial campaign, Mitt Romney, the current governor, sensing the lack of popular support for the policy, changed his unequivocal supportive 1994 Senate race position on vouchers to a position of qualified support, stressing that the issue will not be part of his agenda.¹⁸⁹ All the Democratic gubernatorial candidates in 2002 were opposed to school vouchers, including former Secretary of State for Labor, Robert Reich, who only two years ago wrote a journal article in favor of vouchers.¹⁹⁰ Clearly, no candidate – either Democrat or Republican – thinks it politically prudent to be associated with a pro-voucher stance.

¹⁸⁷ Scott Lehigh, "Public and Private," *Boston Globe*, 14 February, 1993.

¹⁸⁸ Connie Page, "Public Aid to Private Schools Loses Battle," *Boston Herald*, 21 December, 1994.

¹⁸⁹ Anand Vaishnav, "Gubernatorial Foes Spar on School Vouchers Issue," *Boston Globe*, 29 June, 2002:

¹⁹⁰ "For Candidate Reich, a flip-flop on School Vouchers," (2002); "Gubernatorial Foes Spar on School Vouchers Issue," (2002).

Charter schools

While the voucher program in Massachusetts never got off the ground, charter schools made more headway. Charter schools are independent public schools that, despite their formally public status, are usually founded by non-public groups and entities and are often managed by nonprofit and for-profit organizations. Most opponents of these schools consider them as private schools because of the way that private interests are involved in running the schools. Hence, the growth of the charter school movement does – although imperfectly – fall into the category of privatization of delivery.¹⁹¹

The shift in the national educational climate towards more private involvement during the 1980s and 1990s resonated strongly in Massachusetts in the early 1990s. The Pioneer Institute – a neo-liberal think tank dedicated to the dissemination of privatization ideology – promoted the ideas of charter schools and school choice as appropriate responses to the alleged educational crisis in Massachusetts. The legislature and governor were spurred into action on the education front by the McDuffy lawsuit that demanded an overhaul of the existing school funding arrangements based on claims that school funding in the state was inequitable and discriminated against students from poorer areas.¹⁹²

Democrat leaders in the legislature (Senator Thomas Birmingham, the Ways and Means Committee Chairman, and Representative Mark Roosevelt) designed the Education

¹⁹¹ Charter schools, however, are not a ‘perfect’ case of privatization of delivery because there is far more public involvement in the certification and management of these schools than in private schools. Whether charter schools should be considered private or public depends on the degree of control different states exercise over these schools. The specific Massachusetts charter law allows schools a considerable degree of autonomy when compared with most other states.

¹⁹² Umass Donahue Institute, “the status of Education Reform in Massachusetts,” available from http://www.edbenchmarks.org/schoolimprovement/Ed_Reform.pdf.

Reform Act of 1993 (ERA), and Governor Weld signed it less than a week after the Supreme Judicial Court of Massachusetts ruled in favor of the plaintiffs in the McDuffy case.¹⁹³ Among many other things, the Act included an authorization for 25 charter schools. Governor Weld wanted more charter schools, but the legislature was unwilling to forego the cap.¹⁹⁴

The introduction of charter schools in Massachusetts was made possible by the cooperation of several actors. The Republican governor was a supporter of charter schools and he was undoubtedly influenced by the national climate and the strongly pro-market ideas in education disseminated by the neo-liberal Pioneer think tank.¹⁹⁵ During 1992, Michael Sentence, an under secretary from the newly formed Department of Education, worked closely with Roosevelt and Birmingham on formulating the charter school program.¹⁹⁶ The administration's support was important but apart from Roosevelt and Birmingham, the charter school idea needed support from legislative leadership to survive. This support was provided by William Bulger, the Senate President, who was supportive of school choice in general.¹⁹⁷

Surprisingly, the Massachusetts Business Alliance for Education, a group that was very instrumental in pushing and designing the reform in education, was – at best – ambiguous

¹⁹³ Bryan C. Hassel, *The Charter School Challenge: Avoiding the Pitfalls, Fulfilling the Promise*, (Washington, D.C.: Brookings Institution Press, 1999), 46-54.

¹⁹⁴ Peter J. Howe, "Weld Puts Lukewarm Pen to Education Reform Bill," *Boston Globe*, 19 June, 1993; Peter J. Howe, "Weld Proposes Modification of education Bill," *Boston Globe*, 2 July, 1993.

¹⁹⁵ Hassel (1999): 50.

¹⁹⁶ Michael Sentence, former Legislative Director and Education Undersecretary for Governor Weld (Massachusetts), April 16, 2004.; Paul Reville, Cofounder of the Massachusetts Business Alliance for Education, September 24, 2003.

¹⁹⁷ Peter J. Howe, "Wider School Choice Proposal is Promised," *Boston Globe*, 24 February, 1993; Rosenberg interview.

about charter schools. Charter schools were viewed by the Alliance as a side issue and a possible obstacle for the passing of the much-needed reform in education.¹⁹⁸ At this time, however, Bill Edgerly, the CEO of Street State Bank and an education activist teamed up with Steve Wilson, the Head of Weld's Strategic Policy Team, to create a new organization which they named "CEOs for Fundamental Change in Education" in order to promote school choice. Edgerly and Wilson were strong supporters of the charter school idea and personally lobbied state senators for its inclusion in the ERA.¹⁹⁹ Education Management Organizations, especially Edison, were also showing interest in the prospect of charter schools in Massachusetts.²⁰⁰ Edison discussed their operations with both Weld and Bulger. The company's influence over the policy process, however, was negligible.²⁰¹

The two largest teacher unions, the Massachusetts Teachers Association (MTA) and the Massachusetts Federation of Teachers (MFT), were opposed to the planned introduction of charter schools fearing that such schools would effectively privatize education and undermine the public school system.²⁰² However, in contrast to the case of the repeal of the no aid amendment, they did not have a broad and well-organized coalition to back them. Furthermore, the bill as a whole included many elements, especially a promised \$2

¹⁹⁸ Craig Bolon, "Education Reform in Massachusetts," 30 August, 2000, http://www.massparents.org/easternmass/brookline/ed_reform_bolon.htm; Joan Vennochi, "Dangerous Liaisons," *Boston Globe*, 12 March, 1993.

¹⁹⁹ Bill Edgerly, founder of CEOs for Fundamental Change in Education (Massachusetts), April 23, 2004; Steve Wilson, Head of Governor Weld's Strategic Policy Team (Massachusetts), founder of Advantage Schools, October 6, 2003; Thomas Birmingham, former President of Massachusetts State Senate, October 20, 2003.

²⁰⁰ Patricia Nealon, "Project may Run some Public Mass. Schools," *Boston Globe*, 15 April, 1993.

²⁰¹ Sentence interview; Reville interview; Mark Roosevelt, former Chair of Massachusetts House Education Committee, Democratic Gubernatorial Candidate (Massachusetts 1994). September 30, 2003; Julie Johnson, Massachusetts Teachers Association, October 29, 2003.

²⁰² Kelley interview; Johnson interview.

billion in additional education funding, that the unions approved of and wanted to see passed. Weld made it clear that he would not approve additional funding without reform creating a clear tradeoff for the unions. The framers of the bill also included other clauses that the teacher unions found problematic.²⁰³ Roosevelt claimed that this was no accident; by packing the union's agenda, it was easier for the supporters to force unions to compromise. Furthermore, union opposition was spread thin over different issues instead of being concentrated on just one or two main issues.²⁰⁴ Ultimately, the MTA decided to support the ERA while the MFT opposed it.

The reform law was signed June 1993, and the first charter schools opened September 1995.²⁰⁵ The Massachusetts charter school law is considered a "strong" law because it offers the schools a considerable degree of independence in their management (e.g., not subject to the school district's supervision), student funding is equivalent to that of public schools, and a wide variety of organizations can found a school.²⁰⁶ For-profit companies cannot technically sign a charter with the state, but the school trustees are allowed to subcontract with a for-profit company to manage a school, as is indeed the case for several Massachusetts charter schools.

²⁰³ The main example was probably changes in teacher tenure rules.

²⁰⁴ Roosevelt interview; this point has been also made by Steve Wilson.

²⁰⁵ Massachusetts Department of Education, "Education Reform Progress Report – May 1997," available from <http://www.doe.mass.edu/edreform/edreformreport/erprogrpt597-1.html>.

²⁰⁶ Massachusetts Department of Education, Charter School Office, "Massachusetts Charter Schools: Questions and Answers," available from <http://www.doe.mass.edu/charter/qanda.html>, accessed 22 May, 2002.

The cap on the number of charter schools was raised twice since the passing of the ERA. In 1997 it was raised from 25 to 37 and then again in 1999 from 37 to 72.²⁰⁷ The teacher unions opposed the rising of the cap. The unions argued that evidence was still lacking to support the proposition that charter schools were a success. The union opposition was offset by the strong support of the leadership. Governor Weld, and more importantly, Speaker of the House Thomas Finneran and Senate President Thomas Birmingham were avid supporters of charter schools and their expansion. The cap increase was supported by the majority in each party.

Several factors facilitated the raising of the cap. First, the written media, as expressed in numerous editorials, was in favor of raising the cap, including the liberal and influential *Boston Globe*. No less importantly, public opinion appeared to be in favor of charter schools. The Chairman of the State Board of Education, James Peyser, urged the legislature to raise the cap citing a March 2002 survey commissioned by the neo-liberal Pioneer Institute that claimed that 60% of Massachusetts residents favor increasing the number of charter schools (down from 68% according to a similar survey conducted in July 1996).²⁰⁸ The timing of the survey was no accident. The Pioneer institute commissioned the two surveys ahead of the legislative sessions in order to “help inform this impending legislative process”.²⁰⁹ From 1996 to 1999, the UMass Poll also asked questions regarding opinion of charter schools and received generally favorable answers

²⁰⁷ Michael Crowley, “House OK’s Hike in Teacher Pensions, More Charter Schools,” *Boston Globe*, 22 June, 2000.

²⁰⁸ James Peyser, “House should OK more Charter Schools,” *Boston Herald*, 10 April, 2000; Pioneer Institute, “Policy Directions: Survey of Massachusetts Residents Shows Clear Majority Supports School Choice,” October 1996, <http://www.pioneerinstitute.org/research/policy/piodrct2.cfm>, accessed 20 March, 2003; Pioneer Institute, “School Choice Survey: Topline Data,” March 2000, <http://www.pioneerinstitute.org/research/policy/piodrct8data.cfm>, accessed 21 May, 2004.

²⁰⁹ Pioneer Institute (1996).

(see table 2-1 below). The most forceful expression of public opinion was probably not the polls but the long waiting lists for charter schools. By 2000, the number of charter school students was 12,700 and there were 9,400 students on waiting lists.²¹⁰

Table 2-1: UMass poll – various years

Question	Answer	October 1996	January 1997	April 1997	April 1999	June 1999
From what you know about Charter Schools, do you favor or oppose them?	Favor	69%	54%	58%	47%	68%
	Oppose	16%	20%	4%	16%	32%
	No opinion/ Don't Know	15%	26%	39%	38%	Not an option

All information taken from UMass Polls at <http://www.mccormack.umb.edu/umasspoll/>.

A second factor that facilitated the raise in the cap was the improving financial position of public education. The state budget for Education Local Aid increased steadily since the passing of the ERA, adding \$2 billion by the end of the decade.²¹¹ With the state education budget increasing by hundreds of millions of dollars a year, the argument that charter schools were draining scarce funds from public schools had little force. Furthermore, the State provided reimbursement funds for school districts to offset the decline in revenue brought about by the departure of children to charter schools (the average district funding per student followed the student to the charter school). According to the reimbursement formula, the sending school district would receive 100%

²¹⁰ Editorial, "Easy Call," *Telegram & Gazette*, 17 July, 2000.

²¹¹ Birmingham interview.

reimbursement for the first year, 60% for the second, and 40% for the third year.²¹² Apart from helping sending schools to adjust their fixed costs following the departure of students to charter schools, this provision obviously lessened the tension between regular public schools and charter schools.

Third, the leadership, as was true of 1997, was solidly behind the legislation. The Governor, Speaker of the House and Senate President, were all staunch supporters of charter schools.

Finally, charter schools were not the only important issue on the agenda of the public education constituency. The teacher unions supported a new retirement plan for teachers that Governor Paul Celluci vetoed. The House could override the governor's veto and the unions lobbied for exactly that. The raise in the charter cap and the teacher retirement plan were brought to a vote on the same day (June 21st, 2000). While the teacher unions did not get their way on charters, they were very pleased with the House override of the governor's veto on the retirement plan bill. The charter school bill passed and raised the cap on the number of charter schools to 72 (and 48 Horace Mann schools), increased the ceiling on Massachusetts public students that could attend charter schools to 4%, and the ceiling on district funding going to charter schools to 9% of the district budget.

²¹² Massachusetts Department of Education, "Reimbursement of Charter School Tuition," 1 April, 1998, http://finance1.doe.mass.edu/charter/charter_tuition.html, accessed 20 May, 2004.

Recently, the trend of charter school growth has been challenged. The legislature has voted in favor of bills that impose a moratorium on charter schools.²¹³ Opponents argue that the schools have failed to deliver on their promise of innovation, do not provide real choice and, most importantly, drain scarce resources from the public school system. In this political struggle, charters are not viewed by their opponents as public schools but as private schools that are undermining the public school system.

The bills' success had much to do with the state's economic predicament. The state was in the midst of its worst fiscal crisis in more than half a century.²¹⁴ The implication for the education budget was clear: painful cuts. Indeed, after a \$74.6 million cut in 2003, an additional \$227.3 million were trimmed from a budget that experienced almost a decade of continuous growth before that.²¹⁵ Governor Mitt Romney mentioned a possible 10% cut to state aid.²¹⁶ While this cut would have had an adverse effect on the per-student funding for charter schools, the projected growth in charter school students implied that the overall charter school budget would grow at the expense of school district budgets. The district school reimbursement program for charter school students could no longer offset these losses as the budget for reimbursements was eliminated in the previous year's budget by then Governor Jane Swift.²¹⁷ Education Commissioner Driscoll was aware of the ramifications for charter schools: "It has pitted charter schools against districts in a

²¹³ House No. 1820 & 2215 (2004); Rosenberg interview; Parente interview; Blumer interview.

²¹⁴ Massachusetts Taxpayers Foundation, "State Budget '03: The Perfect Storm...Unleashed," February 2003.

²¹⁵ Massachusetts Taxpayers Foundation, "State Budget '04: The Long Road Back, Budget Summary," January 2004, 9.

²¹⁶ "Charter School Debate Heats up Around State," *The Associated Press State & Local Wire*, 12 January, 2003.

²¹⁷ Anand Vaishnav, "Romney to Seek Aid for Charter School Losses," *Boston Globe*, 25 February, 2003.

way that we've never seen before, and in fact, it's getting what I could call downright ugly. It's become very, very negative".²¹⁸

On April 28th, 2004, the House approved a budget that included a one year moratorium on charter schools that would allow time to change the funding formula of charter schools in a way that would no longer harm local school districts.²¹⁹ The Senate followed the House's lead by approving the moratorium.²²⁰ Romney, however, vetoed the moratorium. For now, Massachusetts' charter schools are safe, but they are definitely under siege.

Texas education

Figures and general contours

In 2004, about 190 state-approved charter schools and thirty five school-district-approved charter schools with a combined student population of 73,000 operated in Texas.²²¹ The share of charter school students among the entire public school student populations of 4,239,911 is 1.7%. Charter schools were first authorized by the Texas legislature in 1995, with considerable growth occurring between 1997 and 2000 and tapering off in the last couple of years (see table 2-2). In 2001, the legislature capped the number of state approved charters at 215, thus the current growth potential of charter schools is quite limited.

²¹⁸ "Charter School Debate..." (2003).

²¹⁹ Scott Greenberger, "House Targets Charter Schools," *Boston Globe*, 29 April, 2004.

²²⁰ Kevin Rothstein, "Charter Schools Face Roadblocks in Senate," *Boston Herald*, 14 May, 2004.

²²¹ Charter School Resource Center of Texas website, http://www.charterstexas.org/about_csrtc.php, accessed May 5, 2004; Texas Education Agency, FAQs, <http://www.tea.state.tx.us/charter/faqs/faggen.htm>, accessed May 5, 2004.

Table 2-2: State approved charters awarded

1996	1997	1998-99	2000	2001	2002	2003	Other	Removed	Total
20	41	109	40	13	2	6	1	31	190

Source: Charter School Resource Center of Texas, Texas State-Approved Charter School Statistics, http://www.charterstexas.org/resources/tcs_stats.php, accessed 5 May, 2004.

While charter schools are the most important manifestation of education privatization in Texas, they are not the only one. There are a handful of cases in which school districts contract with an Education Management Organization to manage specific schools. There are also cases in which the district pays student tuition, for students from special populations, to attend a private school. Finally, the privatization of ancillary functions, such as bussing and food services has increased in the last few years.²²² School voucher programs, however, have yet to make a breakthrough in Texas.

Charter schools in Texas

S.B. 1

In 1995, in S.B. 1, the Texas legislature authorized the establishment of twenty open enrollment charter schools and created the legal framework for school districts to create as many locally authorized charters as they saw fit. The support for charter school in the legislature spanned both parties. The widespread support for charters was fueled, to a great extent, by the notion that the traditional public schools were failing certain student populations.²²³ Interestingly, the prevalent sense of public school failure existed on a

²²² Melanie Markley, "No free Lunch," *Houston Chronicle*, 25 May, 1997; Cindy Horswell, "Dayton school district puts bus system in private hands, *Houston Chronicle*, 10 December, 2000.

²²³ Texas House, Public Education Committee Interim Report to the 77th Texas Legislature, "Charter Schools," 2000.

backdrop of constant improvement in student performance on state exams.²²⁴ The bipartisan support for charter schools was also expressed by both gubernatorial candidates in the 1994 elections. Despite major differences on many other fronts, both George W. Bush and Ann Richards agreed on the need for education reform and about charter schools being part of the answer to the woes of the education system.²²⁵

Surprisingly, the traditional public education organizations were, by and large, either supportive of establishing charter schools, in one form or another, or were silent on the issue. The Texas PTA backed the charter school proposals of the Lieutenant Governor.²²⁶ Nevertheless, the PTA demanded tight state control of the charter schools.²²⁷ The Texas Association of School Boards support of charter schools was also conditional: Charter schools were fine as long as the local school boards controlled them. The Texas Federation of Teachers promoted a certain version of charter schools with considerable teacher input that was rejected by the legislature.²²⁸ The organization was not enthused with charter school proposals that allowed for the involvement of private entities viewing such charter schools as a stepping-stone on the way to vouchers. The fact that the public school organizations in Texas were not necessarily opposed to charter schools, in some cases even supported them, and did not agree among themselves regarding charter schools, meant that there was no effective opposition to the charter school bill in 1995.²²⁹ Furthermore, S.B. 1 was not solely dedicated to charter schools. The bill included several

²²⁴ Fusarelli (1998), 61.

²²⁵ Phillip Brooks, "Education Reform Unites Opponents," *Austin American Statesman*, 8 May, 1994.

²²⁶ Fusarelli (1998), 74.

²²⁷ Craig Tounget, Executive Director of Texas PTA, December 23, 2003 (phone interview).

²²⁸ John O'Sullivan, Texas Federation of Teachers (treasurer), January 14, 2004.

²²⁹ Fusarelli (1998), 82.

measures, such as the tying of the teacher salary schedule to total state funding, that the education organizations liked. Thus, these organizations were willing to compromise on charters in order to guarantee that the more favorable parts of the bill would pass as well.

The education organizations, nonetheless, did have some reservations about specific charter school proposals, especially proposals that called for extensive deregulation of charter schools and for the establishment of an unlimited number of schools. The Texas legislation process tends to be consensual because of numerous institutional features that make it very difficult to pass controversial legislation. Hence, such reservations did inform the legislative process. The result was that while S.B. 1 did authorize the creation of charter schools, their number was capped at twenty state-authorized charter schools, which were understood to constitute a pilot program, and the charter schools were subject to extensive state regulations.

H.B. 318 and the expansion of charter schools

S.B. 1 conferred on the State Board Of Education (SBOE) the power to grant charters.

Governor Bush encouraged the SBOE to approve charter applications and not micromanage the charter schools.²³⁰ Bush was not only eager to see charter schools open as soon as possible; he also wanted many more charter schools. Bush called upon the legislature to remove the cap on charter schools in its 1997 session or at the very least to raise it considerably.²³¹ H.B. 318 (1997) did just that. It raised the cap on charters to one hundred schools and authorized an uncapped number of charter schools for “at risk”

²³⁰ Stefannie Scott, “Bush pushes hard for charter schools,” *San Antonio Express News*, 16 February, 1996.

²³¹ Associated Press, Gov. George W. Bush wants the next Legislature...,” *San Antonio Express-News*, 15 May, 1996.

students (students who have either dropped out of school or are at risk of doing so). The bill was unanimously approved in both the Senate and the House education committees. However, in contrast to 1995, several education organizations formally opposed the bill in committee hearings. The education commissioner was also less than enthusiastic about the expansion of charters without any corresponding expansion of the monitoring power of the Texas Education Agency.²³² Opposition to charter schools was mounting.

The SBOE, an elected body with a clear Republican majority, became the central actor in the development of the charter school movement in Texas in the following years. In 1997-1998, the SBOE approved 109 charters. The applications of many of these charters received negative reviews from the Texas Education Agency. An interim report investigating charter schools the House Public Education Committee concluded that the SBOE handled charter school growth poorly and approved applications due to political pressure.²³³ This evaluation is certainly compatible with the aforementioned statements by Governor Bush calling on the SBOE to approve as many as charter schools as possible.

The outcome of the 1997-1998' round of charter school approvals was the creation of a number of charter schools that received very bad publicity. Some charter schools closed owing the state money. In one notable case that received considerable media attention, the Academy of Austin closed its doors without notifying students' parents.²³⁴ 600

²³² Mike Moses, Dallas ISD Superintendent and former Commissioner of Texas Education Agency, January 21, 2004 (phone interview).

²³³ Public Education Committee Report (2000), 7.

²³⁴ "A review of charters in trouble," *Associated Press*, 13 September, 2000.

children were forced to repeat a grade because of their displacement due to charter school mismanagement and subsequent closing.

H.B. 6 and the charter cap

In December 1999, Speaker of the House, Pete Laney, assigned the House's Public Education Committee the task of studying charter schools. The committee's report, published less than a year later, was far from complementary. The report found the process of charter school approval to be deeply flawed. No less importantly, the performance of the average charter schools was found to be inferior to that of the average public school. The questionable quality of some of the charter schools highlighted another deficiency: the Texas Education Agency lacked the manpower and resources to adequately monitor the existing charter schools but that did not stop the SBOE from approving additional charter schools. Although there were numerous incidents of mismanagement and even illegal practices in charter schools, it was often the media that first uncovered these problems and not the undermanned Texas Education Agency. Finally, charter school boards of trustees were allowed to sub-contract with private Education Management Organizations. Too often, according to the report, the board of trustees did not supervise the managing organization – rather the management organization controlled the board. As a result, the Education Management Organizations, which were not legally accountable to the state, had unchecked power in the schools. The report made a long list of recommendations that were intended to make the charter review

process more rigorous and charter schools more accountable. The most important recommendation, however, was to impose a moratorium on new charter schools.²³⁵

The recommendations for a charter school moratorium and stricter accountability measures were incorporated into H.B. 6 (2001) authored by representative Jim Dunnam (D) and co-sponsored by representative Rick Hardcastle (R). Dunnam's bill was supported by the Chair of the House's Public Education Committee Paul Sadler (D) who argued that the bill would help charter schools because it would allow them to develop in a more orderly fashion.²³⁶ In the public hearing that took place in the committee, parents testified against charter schools.²³⁷ The different education organizations – teacher associations, Texas PTA, Texas Association of School Boards, and the Coalition for Public Schools – were supportive of the legislation. The Education Commissioner, Jim Nelson, was also in favor of a temporary moratorium until the Texas Education Agency could create the necessary capacity to monitor the schools properly.²³⁸ The bill, however, had one important detractor – Governor Rick Perry. Perry promoted an amendment that would have neutralized the bill. The amendment, however, was defeated in the House.²³⁹

The bill faced an uphill battle in the Senate Education Committee where the Republicans had a majority. The Senate version of the bill turned out to be very different from the House version. The Senate version dropped many of the measures that were intended to

²³⁵ Public Education Committee Report (2000).

²³⁶ Bridget Gutierrez, "Charter School Failings aired," *San Antonio Express-News*, 21 March. 2001.

²³⁷ "Charter School Failings aired," (2000).

²³⁸ Jim Nelson, former Commissioner of Texas Education Agency, December 15, 2003 (phone interview).

²³⁹ Texas House Journal, 968, 4 April, 2001.

increase charter school' accountability and also made no mention of a moratorium.²⁴⁰ Dunnam, the author of H.B. 6, was disappointed with the Senate version and made it clear that the House would not accept it. At this point the legislative process faced two alternative scenarios. Either the bill would be discussed in a conference committee that would somehow iron out the major differences between the House and Senate versions or the bill would die. Teel Bivins, the Chair of the Senate Education Committee, nearly did kill the bill by withdrawing it from the Senate floor following heavy criticism of the Senate version.²⁴¹ Bivins, however, claimed that he was not interested in retaining the status quo on charter schools so he reintroduced the bill one day later for a vote.²⁴² The media, for their part, continued to pursue stories of problem charter schools. In the week preceding the Senate debate, the *Houston Chronicle* ran a story on the Texas Education Agency's probe into the mismanagement of one of the larger charter schools.²⁴³ The media followed closely the debate regarding H.B. 6, usually mentioning in articles the charter school failings that motivated the bill in the first place. In this public atmosphere it was no surprise that the bill did make it to the conference committee.

In the conference committee, Dunnam made it clear that he wanted to limit the growth of Charter Schools for the time being and there was need for more accountability measures. Bivins was opposed to a moratorium and Governor Perry was prepared to veto a bill that would establish a moratorium on charters. The compromise version of the bill included

²⁴⁰ Bridget Gutierrez, "Senate guts House's charter school legislation," *San Antonio Express-News*, 10 May, 2001.

²⁴¹ Kathryn Wolfe, "Senator bows to critics, pulls charter school measure," *The Houston Chronicle*, 17 May, 2004.

²⁴² Natalie Gott, "Senator Pulls charter school bill from Senate floor," *The Associated Press State & Local Wire*, 16 May, 2001.

²⁴³ Eric Berger, "Probe stirs up charter school flap," *The Houston Chronicle*, 11 May, 2001.

new accountability measures for charters and, instead of a moratorium, it imposed a cap of 215 on the number of charter schools.²⁴⁴ The new cap did restrict further expansion of charter schools because at that time there were already 193 approved charter schools. Therefore, the total number of charter schools could increase by no more than 22.²⁴⁵

As could be expected, teacher groups were pleased with the bill that limited charter school growth. More surprisingly, perhaps, Christi Martin, the Executive Director of the Texas Association of Charter Educators praised the bill saying that: "Texas taxpayers and parents must be confident that all charter schools operate prudently, openly and effectively (...) This legislation provides that confidence without unduly infringing on the flexibility and innovative potential of these schools."²⁴⁶ The support of the Texas Association of Charter Educators for a bill that caps the number of charters and increases charter accountability might appear puzzling at first. The media coverage of the shortcomings of several schools, however, was creating a negative image for the entire movement. Thus, many charter school administrators understood the need for measures that would weed out bad performers.²⁴⁷

The conference committee bill still faced a major challenge in the House. In the House, the bill was nearly killed off through a procedural maneuver orchestrated by Representative Kent Grusendorf (R). The Speaker of the House, Pete Laney (D),

²⁴⁴ Jim Dunnam, Texas State Representative, January 20, 2004 (phone interview); The previous cap was set at 120, a lower number, but the law allowed an unlimited number of charters for "at risk" students to be established. H.B. 6 eliminated the "at risk" category.

²⁴⁵ "Highlights Saturday from the Texas legislature," *The Associated Press State & Local Wire*, 26 May, 2001.

²⁴⁶ "Lawmakers send charter school measure to Perry," *The Associated Press State & Local Wire*, 27 May, 2001.

²⁴⁷ Nelson interview.

however, set an ultimatum to the opponents of the bill. Laney threatened to kill all the other bills on the legislative agenda if H.B. 6 failed to pass.²⁴⁸ The bill passed both the House and the Senate. The last hurdle to the bill was a possible governor veto. Governor Perry was opposed to the bill and his veto would have killed the bill outright, because the legislative session was over, so the legislators could no longer override the governor's veto. The governor chose neither to sign the bill nor to veto it, a step that allowed the bill to be enacted into law but demonstrated the governor's disapproving view of it. This begs the question of why the governor did not veto a bill he opposed from the outset. Both interviewees that supported and opposed the bill thought the governor's main reason for refraining was that he did not want to be publicly viewed as a supporter of the bad charters schools that were intensively covered in the media at that time.²⁴⁹

The impact of the bill in terms of the expansion of the charter school movement was considerable. In the two years since the bill came into effect, the SBOE approved only eight additional charters.²⁵⁰ This is because the approval process has become more rigorous than it was before. The enhanced rigor is explained by the changes in the process and by the negative attention focused on charter schools.²⁵¹ There is little reason to expect H.B. 6 to be repealed anytime soon. Kent Grusendorf, the biggest opponent of the bill, and the current chair of the House education committee, does not intend to try to

²⁴⁸ Bob Richter, "Death penalty bill gets lawmakers' OK," *San Antonio Express-News* 27 May, 2001; Maeve Reston, "Charter School bill goes to Perry," *Austin American-Statesman*, 28 May, 2001.

²⁴⁹ Chris Patterson and Byron Schlomach, Texas Public Policy Foundation, January 14, 2004; Dunnam interview.

²⁵⁰ Charter School Resource Center, "Charter School Statistics."

²⁵¹ Dunnam interview.

repeal the bill in the next session. He does not think he has the necessary votes for doing so.²⁵²

School vouchers

S.B. 1

School vouchers and charter schools developed as parallel policies in Texas during the same years with one important difference: while charter schools were established in the 1995 legislation, school voucher legislation, however limited, has yet to pass the legislature. The first school voucher bill was introduced in the Texas legislature in 1993 by Representative Grusendorf.²⁵³ The bill did not pass and received little attention.²⁵⁴ Things changed in the next legislative session. In 1995, S.B. 1, authored by Teel Bivins, incorporated language that would have allowed for the creation of a pilot voucher program for disadvantaged children.

Governor Bush was very supportive of vouchers. He argued that vouchers were an “interesting concept” that were worth a try.²⁵⁵ The Democratic Lieutenant Governor, Bob Bullock, was also a voucher proponent and was named honorary chair of ‘Putting Children First’, a pro-voucher group. Bullock’s support was probably more important than even that of Bush, because Bullock was considered to have very extensive control over the Senate which had a small Democratic majority at the time. The situation in the House, however, was different. The chair of the education committee, Paul Sadler, was

²⁵² Kent Grusendorf, Chair of Texas House Public Education Committee, January 21, 2004.

²⁵³ Grusendorf interview.

²⁵⁴ O’Sullivan interview.

²⁵⁵ Fusarelli (1998), 69.

apprehensive about transferring the state's responsibility for educating children to private entities.²⁵⁶ More importantly, the Speaker of the House, Pete Laney, was a stringent opponent of vouchers.²⁵⁷ The struggle over the voucher proposal in S.B. 1 (1995) was decided in the conference committee. Supporters of school vouchers conceded vouchers in return for the elimination of a measure that would have capped class size in home-rule districts – another new educational concept promoted by Governor Bush.²⁵⁸ The compromise bill eliminated vouchers but retained charter schools and it was signed into law on May 30th, 1995 by Governor Bush.

1995-2001: support and opposition

Outside of the legislature the battle over vouchers was already in full swing. The voucher movement was financially backed by James Leininger, a San Antonio multi-millionaire, who supported numerous conservative causes with a special emphasis on vouchers. Leininger became the main financial backer of conservative causes and Republican politicians in Texas during the 1990s. Leininger financed and helped create conservative think tanks (Texas Public Policy Foundation, Texas Justice Foundation) and a PAC (Putting Children First), that were involved in promoting vouchers.²⁵⁹ He was also by far the biggest individual donor to election campaigns in Texas, over the last decade. In 1998, Leininger loaned \$ 1.1 million to Rick Perry's (R) campaign for Lieutenant Governor and \$950,000 for Carole Keeton Rylander's (R) campaign for the office of comptroller. Perry was a relative unknown when compared with John Sharp (D), the state

²⁵⁶ A. Phillips Brooks, "School voucher proposal omitted by House panel," *Austin American-Statesman*, 31 March, 1995.

²⁵⁷ Pete Laney, former Texas House Speaker, February 4, 2004 (phone interview).

²⁵⁸ A. Phillips Brooks, "Conferees settle issues on education," *Austin American-Statesman*, 17 May, 1995.

²⁵⁹ Karen Olsson, "Mr. Right," *Texas Monthly*, November 2002.

comptroller, and there is little doubt that Leininger's contribution was an important factor in the campaign.²⁶⁰ Both Perry and Rylander are voucher supporters. Between 2000 and June 2002, Leininger contributed another \$1.5 million to state campaigns and causes. Leininger has donated to a wide range of offices. Among the most influential posts he targeted are member seats on the SBOE. With his help, the board has shifted towards a more conservative composition. The *Texas Monthly* labeled Leininger the most influential Republican in Texas ranking him even above the governor.²⁶¹

The voucher coalition was well funded and headed by an organization, Putting Children First, which was established for this purpose. The voucher cause was also espoused by a number of religious organizations that were interested in receiving public support for their schools. First and foremost among these religious organizations was the Texas Catholic Conference which has the largest network of parochial schools in Texas – a network that suffers from consistent financial strain.²⁶²

The opposition, in contrast to the case of charter schools, was unified and well organized. A new organization (established in 1995), the Coalition for Public Schools was at the center of the opposition. This organization was formed by the different teacher and school administration organizations and numerous liberal (e.g., ACLU) and mainstream religious organizations (e.g., Pastors for Peace). All counted, there are close to forty

²⁶⁰ Robert Bryce, "Million Dollar man," *The Austin Chronicle*,

²⁶¹ "Mr. Right" (2002).

²⁶² Brother Richard Daly, Executive Director of Texas Catholic Conference, January 13, 2004.

member organizations in the coalition at this time.²⁶³ The coalition argues that school vouchers would undermine public schooling.

The media was, in general, opposed to the voucher concept. Editorials criticized voucher proposals arguing that they undermine equitable public education.²⁶⁴ This critical attitude contrasted with what was a generally supportive view of charter school proposals at the time.²⁶⁵ Public opinion, however, was supportive of a voucher pilot program in 1995 according to a Texas Poll that found that 55% of the public supported a voucher pilot with only 35% in opposition.²⁶⁶

In the ensuing years, the power of the Republicans, who were generally supportive of vouchers, grew in the legislature. Nevertheless, although voucher bills were proposed in 1997 and again 1999, they did not pass the House. The Speaker of the House, Pete Laney, was strongly opposed to vouchers.²⁶⁷ One of the main proponents of vouchers went as far as to name Laney as the main reason why vouchers did not pass in Texas during these years.²⁶⁸

Vouchers were not part of the leadership's agenda in 2001. One reporter noted that it appeared that the vouchers have become, the 'V-word', a dirty word that nobody dares

²⁶³ The Coalition for Public Schools, "Resource Directory: Coalition for Public Schools Organizations," <http://www.coalition4publicschools.org/coalition/resource/resource.shtml>, accessed 12 May, 2004.

²⁶⁴ "Oppose School vouchers," *Austin American Statesman*, 10 June, 1996; "No Vouchers," *The Houston Chronicle*, 22 April, 1997.

²⁶⁵ Clay Robinson, Reporter for the *Houston Chronicle*, December 18, 2003 (phone interview).

²⁶⁶ A. Phillips Brooks, "Battle lines shift in school voucher fight," *Austin American-Statesman*, 16 February, 1999.

²⁶⁷ Peggy Fikac, "Leaders disagree on vouchers," *Associated Press State & Local Wire*, 22 March, 1999.

²⁶⁸ Grusendorf interview

utter.²⁶⁹ Newly appointed Governor Perry (replacing Bush who was elected president) stated that given the makeup of the legislature it would be better to reserve energy for issues other than vouchers that stood a better chance of passing.²⁷⁰ The new Lieutenant Governor, Bill Ratliff (R), went as far as to question the constitutionality of vouchers. One political commentator, Harvey Kronberg editor of the insider newsletter the Quorum Report, explained Perry's reluctance to touch vouchers as part of his effort to recast himself as more of a moderate ahead of the 2002 gubernatorial elections.²⁷¹

The failure of H.B. 2465

The political context appeared to change completely ahead of the 2003 legislative session. Perry was reelected as governor and voiced his support for vouchers (although he avoided the issue in his election campaign).²⁷² Pete Laney, the strongest political opponent of vouchers in the House was replaced as speaker by Tom Craddick (R), a supporter of the school voucher concept. For the first time in Texas's history both houses of the legislature were captured by the Republicans. This potentially increased the odds of passing a voucher bill given the fact that the voucher issue, in the words of one professional pro-voucher lobbyist, had become a litmus test for party identification. Democrats were almost uniformly opposed to vouchers while Republicans were in favor

²⁶⁹ Clay Robinson, "V-word sidestepping in Austin and D.C.," *The Houston Chronicle*, 28 January, 2001.

²⁷⁰ Peggy Fikac, "Vouchers likely won't make it," *San Antonio Express-News*, 31 January, 2001.

²⁷¹ R. G. Ratcliffe, "Perry's shift towards center seen as election move," *The Houston Chronicle*, 28 January, 2001.

²⁷² R.G. Ratcliffe, "Perry kicks off campaign by pledging GOP agenda," *The Houston Chronicle*, 9 January, 2002.

of vouchers.²⁷³ As usual, James Leininger spent considerable sums of money in support of different candidates that held favorable views on vouchers.²⁷⁴

Kent Grusendorf, the long time proponent of vouchers, was appointed the chair of the House Public Education Committee and promptly introduced H.B. 2465 – a pilot voucher bill. The bill set limits on the number of students eligible for scholarships (40,000) in eleven urban school districts. An interesting component of the bill that was designed to weaken the opposition of the public school establishment was that the private schools would only receive 90% of the scholarship with 10% going to the public schools. In effect, this would transfer money to public schools for students they did not educate. Grusendorf did not explicitly call this bill a voucher bill. Instead he invented a new less loaded term for the pilot program: “freedom scholarships”.²⁷⁵

The hearing in the education committee was heated with many individuals and organizations testifying for and against the bill. On April 3rd, the Public Education Committee passed the bill on a 5-3 vote. One Republican representative Bob Griggs, voted against the bill citing strong anti-voucher sentiment in his district.²⁷⁶ The voucher bill, however, never made it to the House floor and was never debated in the Senate Education Committee.²⁷⁷

²⁷³ Chuck McDonald, Political Consultant and Lobbyist (Texas), December 19, 2003 (phone interview).

²⁷⁴ Texans for Public Justice, “Money in PoliTex: A Guide to Money in the 2002 Texas Elections,” 2002.

²⁷⁵ Editorial, “Vouchers threaten public education,” *Corpus Christi Caller-Times*, 22 March, 2003.

²⁷⁶ John Kirsch, “Texas School-Voucher proponents push for house debate,” *Fort Worth Star-Telegram*, 14 April, 2003.

²⁷⁷ Lucy Hood, “Vouchers may be out,” *San Antonio Express-News*, 26 April, 2003.

The bill failed to pass for several reasons that will be discussed in the chapter dedicated to the comparison of policy domains. Prominent among these were the strong opposition the bill faced from local education establishments, the ability of the Coalition for Public Schools to influence Republican legislators, the severe budget crisis at the time which implied that money for private schools would necessarily be taken away from public schools, and the fact that there was little public demand for vouchers.

Education Management Organizations in Texas

As briefly mentioned in the discussion of charter schools, Education Management Organizations already have a foothold in Texas. Education Management Organizations can receive public funding in two ways in Texas. First, they can contract with the board of trustees of a charter school for the management of the school. This is currently the arrangement for 27 different charter campuses in Texas, up from 15 in the 1999/2000 school year.²⁷⁸ Second, school districts can contract directly with Education Management Organizations for the management of schools in the district.

The most important example of for-profit involvement in Texas was Edison's short stint in running seven schools in Dallas. The Dallas School Board approved a five year contract with Edison for the management of seven schools starting on the 2000/2001 school year.²⁷⁹ The performance of the Edison schools in the first year was abysmal, according to Dallas's Superintendent. Edison was given one more year to show improvement. A Dallas Independent School District report studied the performance of the

²⁷⁸ Texas Education Agency, "Charter Management Company Information Report," 20 January, 2004; House Public Education Committee Report, 2000.

²⁷⁹ Moses interview.

Edison schools at the end of the 2001/2002 school year and found that comparable public school students consistently outperformed Edison school students.²⁸⁰ The Dallas' Superintendent, Mike Moses, decided to terminate the contract with Edison. Edison not only lost the contract, they also lost money in Dallas.²⁸¹ This did not surprise Superintendent Moses who claims that an external audit of the operation of Dallas' schools found very little waste and few inefficiencies in the public system. This audit suggested that Edison's profit margins were, at best, extremely slim.²⁸² The Edison experiment in Dallas suggest that even when for-profit companies manage to penetrate the Texas public school system, they do not necessarily succeed or stay around for very long. Privatization is reversible and in the Texas inhospitable education climate, reversals are quite likely.

English education

Figures and general contours

As befitting a state with an established church, education in England was predominantly religious until the end of the 19th century. The modern public education system in England was created in the 1944 Education Act, which spelled out the responsibilities of the government's Ministry of Education, Local Education Authorities, and the Governing Bodies of the schools. The Local Education Authorities were assigned control over school budgets, student selection and teacher employment. The schools themselves, however, were given extensive authority over their curriculum. This allowed religious

²⁸⁰ Dallas Independent School District, "Achievement Performance Report: Dallas-Edison Partnership Schools 2001-02."

²⁸¹ Tawnell D. Hobbs, "Dallas Schools Superintendent plans to end privatization experiment," *Dallas Morning News*, 17 August, 2002.

²⁸² Moses interview.

schools to continue as part of the public school system (around one third of the schools).²⁸³

Privatization in English education differs from the other case studies in the fact that English publicly funded education has incorporated a significant private delivery component throughout its post- World War II history. Nevertheless, the political dynamics of privatization are strikingly similar to those of Texas and Massachusetts' education systems with subsequent governments making conscious attempts at expanding private delivery since the early 1980s and the opposition fighting tooth and nail against privatization. In the public debate regarding privatization, the new forms of private delivery, introduced in the last two decades, are at the center of attention while the pre-existing voluntary-aided (i.e. faith based schools that are publicly maintained) are usually considered public sector schools. Given this state of affairs, it is not unreasonable to think of only movements away from the status quo established in 1944, towards increased publicly funded private delivery, as privatization.

If one measures privatization of delivery as the change in the number of publicly-funded students in non-public schools, it appears that there occurred very little privatization in England since 1980 (see table 2-3).

²⁸³ C. H. Batteson, "The 1944 Education Act Reconsidered," *Educational Review* Vol. 51, 1 (February 1999): 5-15; Patrick Ainley, "From a National System Locally Administered to a National System Nationally Administered: The New Leviathan in Education and Training in England," *Journal of Social Policy* Vol. 30, 3 (2001): 457-476.

Table 2-3: Publicly funded students in non-public schools – different years

Year	Number of publicly funded students in non-public schools	Share in Total Number of Publicly Funded Students ⁵
1980-1981	4,188 ¹	0.05%
1990-1991	30,169 ²	0.44%
1997-1998	53,458 ³	0.72%
2003-2004	34,400 ⁴	0.46%

¹Includes Students in the Assisted Places Scheme (“The State and Private Education,” 86).

²Includes Students in the Assisted Places Scheme and City Technology Colleges (Hansard, Common Written Answers, 21 October, 1991).

³Includes Students in Assisted Places Scheme and City Technology Colleges (Hansard, Commons Written Answers 11 June, 2003; DfES, “Statistics of Education, Table 44: Independent Schools,” January 1998.

⁴Includes students in Assisted Places, City Technology Schools and City Academies (Hansard, Commons Written Answers, 11 June, 2003 and 8 September, 2003; DfES Standards Site, “Background,” <http://www.standards.dfes.gov.uk/academies/ctcs/ctcbackground/?version=1>, accessed June 14, 2004).

⁵Total Number of Students is calculated according to different tables in the DfES publication “Statistics of Education: Schools in England,” for 1998 and 2003. The number does include voluntary aided and voluntary controlled schools. If one subtracts the number of students of voluntary aided and controlled schools from the total, the share in the third column does not go up by much. For example, in 2003-2004 the share of students in non-public schools would increase from 0.46% to 0.6% if voluntary aided and controlled schools are excluded.

At its peak, in 1997-1998, the last year in which the private school rolls were shaped by the Conservative Party’s educational policy, less than 1% of publicly funded students were educated in non-public settings. This figure has declined since then although it is set to increase once again in the next few years.

If the estimate for privatization of delivery is the private sector budget share, however, the overall trend is different. The share of the education budget allocated to private providers has grown from 7.5% in 1995-96 to 10% in 1998-99.²⁸⁴ This change reflects the increasing privatization of ancillary services under the Labour government.

²⁸⁴ IPPR, *Building Better Partnerships* (2001) Table 3.7, “Trends in Private/Voluntary Provision of Publicly Funded Education, 1979-1999.”

Conservatives in power

The Assisted Places Scheme

Thatcher's government introduced the Assisted Places Scheme in the 1980 Education Act. The Scheme provided scholarships for children from disadvantaged backgrounds to attend independent (i.e., non-public) fee-paying schools.²⁸⁵ Although the Scheme could be considered a clear cut case of privatization of delivery it did not constitute a major revolution in English education and was viewed by the Conservatives as an improved replacement to Direct Grant Schools, which were abolished by the Labour government only three years earlier.²⁸⁶

Stuart Sexton, an able political entrepreneur and an avid neo-liberal, laid the groundwork for the Assisted Places Scheme. Once the Conservatives won the election, and Sexton became the political advisor to the new Secretary of State, Mark Carlisle, he immediately moved to push the Assisted Places Scheme through the legislative process. This was no easy task. First, the conservative party, despite appearances to the contrary, was far from radical and the support for the Scheme was less than solid. At one point, Sexton expressed his fear to the Secretary of State that the program might be abandoned by the government.²⁸⁷ Government apprehensiveness was understandable given the staunch opposition to the Scheme. The Labour Party went as far as to send a letter to private schools informing them that even if the Scheme were approved, the Labour Party would abolish it immediately when back in power; a promise the Labour Party fulfilled eighteen

²⁸⁵ Citizen's Advice Guide, "Education - In England," <http://www.adviceguide.org.uk>.

²⁸⁶ The Direct Grant Schools were independent secondary schools that had both publicly and privately funded students that were selected according to rigorous academic criteria.

²⁸⁷ Tony Edwards, John Fitz and Geoff Whitty, *The State and Private Education: An Evaluation of the Assisted Places Scheme*, (London: The Falmer Press, 1989), 40.

years later. Furthermore, the introduction of the new Scheme was to coincide with education budget cuts making the new scheme a direct competitor to the public school system for diminishing public education funds.²⁸⁸

The Scheme, however, was eventually designed and promoted in a way that would make it less objectionable. First, in contrast to the Direct-Grant Schools, the Scheme provided funds only to students from economically disadvantaged homes. The justification for the scheme was not that it heralded a market in education – although some conservatives certainly viewed it as such – but that it restored valuable opportunities, based on personal merit, for children from the working class. Mark Carlisle, the Secretary of State for Education responsible for the implementation of the plan, argued that the scheme was not about privatization but about opportunities and parental choice.²⁸⁹ The Scheme was also restricted in scope. The initial estimated cost of £50 million was reduced to £25-30 million and a ceiling of 25,000 students was imposed on the Scheme.²⁹⁰ Sexton envisioned a far greater Scheme but he had to accept the compromise to get the plan through. Third, in order to change the impression that the Scheme would reduce even further the already diminished public education budget, the Scheme was funded out of “new money” extended by the treasury and not through the general education budget.²⁹¹

Despite the fact that the Scheme was designed to support predominantly children from a disadvantaged background, many middle class parents took advantage of the Scheme to

²⁸⁸ Hansard, “Oral Answers,” Columns 215-226, 5 February, 1980; *The State and Private Education*, 40-41.

²⁸⁹ *The State and Private Education*, 62.

²⁹⁰ Ibid. 31; Ted Tapper, *Fee-Paying Schools and Education Change in Britain: Between the State and the Marketplace*, (London: The Woburn Press, 1997).

²⁹¹ *The State and Private Education*, 38-40.

subsidize private education for their children.²⁹² In 1997, the year the Assisted Places Scheme was phased out, it had provided places for 37,000 students (the total number of publicly-maintained pupils was around 7.4 million at the time) and was an important source of revenue for many an independent school.²⁹³

City Technology Colleges

In 1986, the Conservative Government introduced the concept of City Technology Colleges and the first such College was announced one year later.²⁹⁴ The Colleges were independent schools (thus, not formally public) that were supported by business and industry, specialized in science and technology subjects, and catered to urban youth. The new education minister, Kenneth Baker's plan was that private businesses would be directly involved in management of the schools and would also contribute to them both financially and in kind. In 1986, the Department of Education and Science sent out a brochure to about 2000 private industrial and commercial organizations appealing to them to become involved with future Colleges. One of the major appeals of the Colleges to the government was that the schools would not be subject to the much despised Local Education Authorities.²⁹⁵ The Colleges had considerable independence from an academic

²⁹² John Fitz, T. Edwards and G. Whitty, "The Assisted Places Scheme – an Ambiguous Case of Privatization," *British Journal of Educational Studies*, Vol. 37, 3 (August 1989): 222-234; Phone interview with Phillip Willis, Education Spokesperson for the Liberal Democrats, May 6, 2003; Theresa May, Conservative Shadow Education Secretary, as quoted in a speech in: "Open Private Schools to Poor - Tories," *BBC News*, April 27, 2001, http://news.bbc.co.uk/2/low/uk_news/education/1300281.stm. accessed 12 September, 2003.

²⁹³ "It Pays to Start them Young," *Financial Times (London)*, 25 June, 1997; "Schools Drop Fight for Assisted Places," *Financial Times (London)*, 29 May, 1997; Department for Education and Skills, "Chart a: Number of Maintained School Pupils," Available from:

<http://www.dfes.gov.uk/trends/index.cfm?fuseaction=home.showChart&cid=3&iid=9&chid=9>;

²⁹⁴ Geoffrey Walford, "From City Technology Colleges to Sponsored Grant Maintained Schools," *Oxford Review of Education*, Vol. 26, 2 (June 2000).

²⁹⁵ Walford (2000).

and administrative standpoint. The pay of staff was not subject to national pay scales and the Colleges were not forced to recognize unions in negotiation.

As could be expected, the Local Education Authorities, teacher unions and the Labour Party were all opposed to these schools. The Conservative Party spurred on by its success in the 1987 national elections proceeded with its plan in the face of the opposition and anchored the Colleges in legislation in the 1988 Education Reform Act. The Colleges, however, did not develop as expected. The main problem was not so much the opposition as the disappointing response from the business community. Few commercial organizations showed real interest in sponsoring a College; some even criticized the notion of individual sponsorship. Moreover, government was hoping for a considerable infusion of private funding from the sponsors but the sponsors – almost all conservative party backers – did not contribute more than 20% of capital costs and the running costs of the Colleges came solely from the public purse.²⁹⁶ Only fifteen Colleges were opened and only thirteen remain in existence today.²⁹⁷

Grant Maintained Schools

The 1988 Education Act introduced several programs and measures that undermined Local Education Authorities and increased school autonomy. The Grant Maintained Schools were the most important innovation of this kind. The difference between Grant

²⁹⁶ Walford (2000).

²⁹⁷ Department for Education and Skills, “CTCs Background,”

<http://www.standards.dfes.gov.uk/academies/ctcs/ctcbackground/?version=1>, accessed 10 June, 2004.

Maintained Schools and regular Local Education Authority schools was, in fact, small.²⁹⁸ Opponents of Grant Maintained Schools often characterized them as a form of privatization but, in contrast to charter schools in the United States, there were hardly any real private sector involvement in the management of the schools and certainly no for-profit involvement.²⁹⁹ The government did, however, create a variant of the Grant Maintained Schools in 1993 that allowed for more private sector involvement. These were named the Sponsored Grant Maintained Schools and they allowed private schools to apply for Grant Maintained Status (thus, effectively becoming public) and for private charitable trusts to open new schools as Grant Maintained Schools.

While the Grant Maintained Schools grew rapidly, in large part due to the government's structure of strong economic incentives for opting out of Local Education Authorities,³⁰⁰ the growth of the sponsored schools was very limited. By the time of the 1997 elections, only twenty applications were received by the Funding Agency for Schools and only seven were approved. Labour and the unions could not stop the establishment of the Grant Maintained Schools but once Labour came into power it moved immediately to abolish them, sponsored schools withstanding. Existing Grant Maintained Schools could become Foundation Schools, a new type of school that was subject to the Local Education Authority, but could still retain its own student selection process and own property (as was true of Grant Maintained Schools). Surprisingly, the Labour education

²⁹⁸ Walford (2000).

²⁹⁹ Martin Rogers, the Education Network/ Local Government Information Unit (England), February 11, 2003.

³⁰⁰ By 1997 over 5% of primary schools were Grant Maintained Schools as were 20-25% of secondary schools (Andrew Turner, MP, February 5, 2003; Martin Rogers Interview).

minister, David Blunkett, did approve seven additional proposals for sponsored grant maintained schools, effectively allowing the schools to receive foundation school status.

Vouchers

The Conservative Party did not seriously contemplate direct privatization of educational services in the form of voucher programs or contracting-out management to private organizations despite principled support for these concepts that went back to the mid-1970s. Thatcher clearly supported private vouchers but sensed that political opposition to the idea was just too strong.³⁰¹ Even the Grant Maintained Schools were, according to Thatcher, a target for criticism and allegations of privatization in education by the opposition. Thatcher had to go out of her way to give assurances, during the 1987 election campaign, that these schools would remain in the public sector. Thatcher recognized the need to give such assurances despite the fact that her own policy preference was for allowing schools to go private.³⁰²

Labour initiatives

Labour came to power in 1997 and its traditional policy on education, as was true of most other sectors, was full support for public provision. Given this tradition and its firm opposition to conservative privatization policies while out of government, the Labour government's new educational policy came as a shock to many an observer.³⁰³ One Labour minister in the department of education even went as far as to publicly distance

³⁰¹ Margaret Thatcher, *The Downing Street Years*, (New York: HarperCollins, 1993), 591.

³⁰² Thatcher, 578.

³⁰³ Janet Theakston, Principal Officer National Union of Teachers (England), July 4, 2002; Interview with Helga Pile, GMB Union, 7 February, 2003.

new Labour from its statist past in the 1970s, arguing that the abolishment of the direct-grant schools under the previous Labour government was “sad”.³⁰⁴ Labour, indeed, did water down the “potentially private” Grant Maintained Schools into Foundation Schools. New Labour, however, was not averse to greater private involvement in education and in some ways actually accelerated privatization of delivery trends that emerged under the conservative governments. Labour leaders have stressed that their goal is not to undermine public education, as they argue was the case under the conservatives, but to strengthen public education by making use of the private sector’s diversity and entrepreneurial spirit. I will mention three privatization-related developments: Private Finance Initiatives, Public-Private Partnerships in education and the contracting-out of management to private companies.

The Private Finance Initiative (PFI)

Labour committed itself to the task of streamlining the PFI approval process that was created in 1992 by the conservative government.³⁰⁵ Under PFI, private companies sign a long-term contract with the State (usually local authorities) to build, maintain and manage large public institutions in a variety of service fields (e.g., hospitals, schools, prisons). PFI holds the promise of quicker construction of public institutions, risk transfer to the private sector, and financing of projects by private capital instead of public capital (an accounting advantage but not a fiscal advantage).³⁰⁶ In schools, however, PFI does

³⁰⁴ David Milliband quoted in Rebecca Smithers, “Private School Role for City Academies,” *The Guardian*, 9 October, 2002.

³⁰⁵ An impressive discussion of PFI – its history, principles, and implications – can be found in the Institute for Public Policy Research’s publication: *Building Better Partnerships* (London: IPPR, 2001).

³⁰⁶ Under PFI, the private contractor raises the private capital necessary to undertake the construction project. The state, however, is responsible for repaying the debt and interest. PFI projects are, therefore, publicly funded, but due to an obscure accounting rule the private capital loans are not included in the

not involve any change in the public nature of academic activities – only ancillary functions are privatized. Labour managed to push forward PFI by vigorously involving numerous companies in competing for contracts, something that the conservatives had failed to do.³⁰⁷ As of January 2003, 31 PFI school projects are in operational mode, with many more in procurement.³⁰⁸

Public Private Partnerships

Labour has followed closely in the footsteps of the previous government in encouraging private organization involvement in education. The School Standards and Framework Act 1998 authorized the establishment of Education Action Zones. The Zones were situated in disadvantaged areas and were based on a cluster of pre-existing maintained (i.e. public) schools. Each Zone was run by an Education Action Forum that included representatives of various education-related bodies and, most importantly, business sponsors. The Forum supported innovative educational projects in the schools. It was funded by a £750,000 annual grant from the government supplemented by a £250,000 grant from private sponsors.³⁰⁹ 73 such Zones were established by 2001 at a public annual cost of over £54 million. In 2003, the Zones were amalgamated into the new Excellence in Cities scheme.

balance of current capital liabilities for the government. This means that government can borrow through PFI without exceeding its borrowing limits because PFI capital is off the public sector balance sheet.

³⁰⁷ Interview with Evan Harris, Liberal Democratic MP and former member of Select Education Committee, 26 June, 2002; Interview with Philip Craig, Senior Policy Adviser, Council of British Industry (CBI), 2 July, 2002.

³⁰⁸ 4Ps, "In a Nutshell - Education PFI as of January 2003", http://www.4ps.co.uk/services_education_overview_nutshell.htm.

³⁰⁹ National Audit Office, "Education Action Zones," HC 130, Session 2001-2002: 26 January, 2001.

Labour's desire to involve private organizations in education also led to the creation of a variant of the Conservative City Technology Colleges – the City Academies. The Academies, as was true of the Colleges, targeted urban youth and were to be established as independent schools by sponsors from business, faith or voluntary groups.³¹⁰ The sponsors were to provide £2 million pounds, about a fifth of the projected capital costs, and the vision that would guide the Academies. Some sponsors even run the schools.³¹¹ The government funds 80% of the schools capital costs and all of its running costs. David Blunkett in March 2000, announced that the first of the Academies would open for the 2000-2001 school year. In fact, the first three Academies opened their gates only in 2002 and as of May 2004, twelve Academies were opened out of a planned 53 projected to be opened by 2007.³¹²

Both the Education Action Zones and the City Academies appear to suffer from a problem similar to that experienced by City Technology Schools: lukewarm business interest and limited business contributions.³¹³

Contracting out

apart from increasing the procurement autonomy of public schools and reducing the Local Education Authorities role in the matter, Labour has pushed failing Local

³¹⁰ Department for Education and Skills, "What are Academies?" <http://www.standards.dfes.gov.uk/academies/> accessed 10 June, 2004.

³¹¹ Department for Education and Skills, "Academy Sponsorship," <http://www.standards.dfes.gov.uk/academies/> accessed 10 June, 2004.

³¹² Geraldine Hackett, "Top Schools Sign Up for Blair's Academies," *Sunday Times*, 30 May, 2004.

³¹³ Fran Abrams, "Academies: is the Price Right?" *The Times Educational Supplement*, 28 May, 2004.

Education Authorities, and sometimes even failing schools, to contract out some or all of their functions to private companies – nonprofit and for-profit alike.³¹⁴ At this time, private companies are running a number of failing Local Education Authorities (the contracts are for seven years). In Surrey, three individual schools have contracted -out management to a private not-for-profit company. This first example of schools contracting for a core educational service has received widespread national attention although the larger significance of the Surrey experience is still unclear.³¹⁵

Opposition and support

Unsurprisingly, the different education-related unions are very concerned about Labour's apparent about-face on privatization in education.³¹⁶ PFI is at the center of the debate because the majority of new building projects are PFIs. The contracting-out of management, while less threatening in terms of current scale than PFI, is also of major concern to unions because of its potentially more serious ramifications. PFI privatizes the jobs of ancillary workers in education who in the past were employed by the local authority, but contracting-out of schools threatens to privatize "core" educational functions: teaching and management of schools. The Public-Private Partnerships, the Education Action Zones (now Excellence in the City) and the City Academies, are of less concern to opponents of privatization. In part this is because business participation in such projects has been somewhat disappointing (although this might be changing with the

³¹⁴ Interview with Alex McKenna, Policy Officer, AMICUS Union, 1 July, 2002; Theakston interview; Phone Interview with Neil McIntosh, Chief Executive of CfBT, 30 January, 2003; John Bridger, Business Development Manager for Cambridge Education Associates (England), January 31, 2003 (phone interview); Martin Rogers interview; Fitz and Beers (2001).

³¹⁵ McIntosh Interview.

³¹⁶ McKenna interview; Theakston interview; Pile interview; Interview with Sampson Lowe, Policy Officer, Unison, 13 February, 2003.

City Academies) and in part because Local Education Authorities have exercised some influence over these projects and have used this influence to safeguard union interests.³¹⁷

Business interests have gradually gained confidence in the viability of the education market, whether in PFI projects or in management.³¹⁸ Several of the leading education companies claim to have some influence over the design of contracts.³¹⁹ The privatization initiatives in education, however, start in Westminster – not the City.³²⁰

The opposition to privatization has not changed the course of the Labour Party. There is no sense of public outrage over the privatization projects. The growth in education expenditure under Labour could explain the relatively weak opposition to privatization from the public and most stakeholders.³²¹

Be that as it may, the pace of privatization of delivery in education is slow, most of the significant privatization has not affected core educational functions, and most politicians shy away from plans to considerably expand private involvement in the core services. Privatization of delivery in education is a very controversial issue in England, so while

³¹⁷ Rhonda Evans, "Education: Twilight for the Zones," *The Guardian*, 3 December, 2002.

³¹⁸ Craig interview.

³¹⁹ McIntosh interview; Bridger interview.

³²⁰ Interview with Rachel Lissauer, IPPR Research Fellow, 21 June, 2002; Criag interview; Theakston interview. The degree of business influence on government policy is debatable. The picture emerging from my interviews is that of government independently making the first move toward privatization of delivery, and in a later stage private companies lobby government in regard to the design process of regulations and contracts. Even then, business influence is mainly through persuasion and not through economic leverage. I have found no evidence for targeted contractor contributions to politicians and parties. Indeed, the private contractors I communicated with claimed that no such contributions exist.

³²¹ Department of Education and Skills, "Table 10.19: Government Expenditure on Education 1991/2-2001/2."

Labour could go further than the Conservatives in this area, they also face an uphill battle.

Massachusetts incarceration

Figures and general contours

Correction privatization in Massachusetts is a non-event. Massachusetts has not authorized private prisons or jails although some functions within public institutions have been privatized.

Privatization attempts

Massachusetts, as is true of many other states, experienced accelerated growth of its prison population during the 1970s and 1980s. This growth was in part due to the increase in the crime rate and in part due to the imposition of tougher penalties especially on drug-related offences.³²² The increase in the number of inmates led to overcrowding of prisons. At one point, in 1985, the prison system was at 164% of its capacity.³²³ Various proposals were presented to address the issue of overcrowding. The idea that the private sector could build and manage prisons was proposed during the mid-1980s by a number of legislators who belonged to the Republican minority. The minority leaders in the House, William Robinson and later Stephen Pierce, both sponsored legislation that would have established a pilot private prison. In every year, from 1985 to 1993, Republican legislators presented petitions that called for the establishment of a private prison. In 1985, the legislature did pass a bill (Chapter 799, Section 25) that authorized the

³²² Michael Fair, former Commissioner of Massachusetts Department of Correction, March 12, 2004.

³²³ House Legislative Documents, House No. 6225 (Massachusetts), "Legislative Research Bureau report on Private Sector Management of Jails and Prisons," August 1986.

construction of a pilot private prison. Governor Dukakis, however, concerned about the state's ability to effectively monitor private prisons and possible security risks, and unsure about projected private cost savings, did not support prison privatization.³²⁴ Prison privatization was not a public issue during this period in Massachusetts: the newspapers failed to pick up on the issue.

The election of William Weld as governor seemingly opened a window of opportunity for privatization. Weld generally approved of privatization. Furthermore, the overcrowding problem and the national experience with privatization of prisons, seemingly made prison privatization all the more appealing. Nothing of the kind happened. The administration did not propose prison privatization and the legislature did not seriously pursue any proposals either. Certain services within the prisons – primarily healthcare – were privatized but even the privatization of specific ancillary functions cannot be attributed to the Weld administration as they already began under the previous administrations.³²⁵

The 1993 Pacheco bill raised the bar for any major privatization initiative. The law requires that private workers be paid similar wages and benefits to their public counterparts and, additionally, it requires that the relevant agency demonstrate that privatization would result in ten percent cost savings. This, of course, creates a major obstacle for the privatization of public prisons as most cost savings from prison

³²⁴ Interview with Michael Dukakis, former Massachusetts Governor, 17 September 2004; Legislative Research Bureau report, 114.

³²⁵ Fair interview.

privatization are derived from lower labor costs.³²⁶ Prison privatization has disappeared from the political agenda since the passing of the bill. In fact, some of the privatization of ancillary functions within prisons had been reversed. Most notably, the delivery of healthcare in prisons has been moved back in-house.³²⁷

Actors

The main proponents of prison privatization in Massachusetts were the Republican minority in the legislature and private incarceration firms. For the Republicans, the prison proposals were part of their ‘being tough on crime’ platform.³²⁸ Governor Weld, however, did not support prison privatization. Private incarceration firms lobbied in Massachusetts for prison privations, yet this lobbying was not very intensive.³²⁹

Among the opponents were Governor Dukakis and also probably Governor Weld. The unions, especially AFSCME and Corrections USA, were opposed to privatization. Corrections USA supported Weld in both the 1990 and 1994 elections, perhaps explaining the Governor’s opposition to privatization in incarceration.³³⁰ The media showed little interest in the topic of prison privatization, failing even to report legislative petitions on the issue.

³²⁶ James Austin and Garry Coventry, *Emerging Issues on Privatized Prisons*, February 2001.

³²⁷ Phone interview with Peter Constanza: Staff Attorney for Massachusetts Correctional Legal Services, 2 March, 2004.

³²⁸ Kenneth J. Cooper, “GOP Plots its Campaign Strategy: Leaders Vote to Stress Taxes, Crime,” *Boston Globe*, 26 September. 1986.

³²⁹ Phone interview with Brian Dawe, Executive Chief of Corrections USA Union, 13 October, 2003; Fair interview.

³³⁰ Dawe interview; Constanza interview.

Texas incarceration

General contours and figures

The number of state and federal prisoners held in private facilities in Texas during 2002 was 16,773, 10.4% of the total prisoner population, far ahead of the runner up Oklahoma that housed 6,470 of its inmates in private facilities.³³¹ Overall, Texas houses close to 18% of the private prisoners in the nation and has by far the largest private incarceration system in the world.

The first experience Texas had with prison privatization was in 1984 when Corrections Corporation of America (CCA) received a federal contract to design, build and manage a detention center for the INS in Houston.³³² In the mid-1980s, however, the state of Texas, as distinct from the federal government, had yet to open a single private incarceration facility.

S.B. 251

In 1987, the Texas legislature passed S.B. 251, which authorized the private construction and management of four private prisons, with a maximum capacity of five hundred inmates each, and a total cap of 2,000 on the number of privately incarcerated inmates in state prisons. The bill was promptly signed into law by Republican governor William (Bill) Clements.

The idea to privatize prisons was by that time already three years in the making. In 1984, the Director of the Texas Department of Corrections, Ray Procunier, during a Board of

³³¹ U.S. Department of Justice, "Bureau of Justice Statistics Bulletin: Prisoners in 2002," July 2003.

³³² Corrections Corporation of America, "About CCA" <http://correctionscorp.com/ccahistory.html>

Corrections meeting, brought up private prisons as a way to cut down the growing prison budget. One month later (December 1984), governor Mark White (D) publicly endorsed prison privatization in a news conference as a way of addressing Texas's financial crisis.³³³ At this point, the legislature showed its first interest in prison privatization by inviting CCA to present a short program on private prisons. CCA president, Thomas Beasley, claimed in the presentation that private prisons would save the state money because the state would not pay for their construction and they would also be built more quickly than public prisons. However, the Texas legislature had a packed agenda on issues of criminal justice and the private prison concept was also a bit too new, for many legislators, to be put into law immediately. The private prison issue had to wait for the next legislative session in 1987.

When the legislature convened in 1987, the authorization of private prisons was high on the agenda, receiving widespread support within the legislature and the administration. Several background conditions made the passing of a private prison authorization bill very likely. First, private prisons were presented as a cost-saving method based on the common assumption that private prisons would be financed by private capital and their operation costs would be lower due to innovation, competition and lower labor costs. In 1984, Texas entered rough economic times and in subsequent years the government budget was repeatedly slashed.

³³³ Philip A. Ethridge, "An Analysis of the Policy Process Pertaining to the Utilization of Private Prisons in Texas," Ph.D. Dissertation, Sam Houston State University (August, 1990): 54-55.

Second, Texas was facing a severe overcrowding problem in its prisons due to the accelerating imprisonment rate and forecasts were that it would only become worse. The state explored different ways to alleviate the overcrowding problem, for instance early release of prisoners, but it was clear that there was no choice but to supply many more prison beds, and fast. Private companies such as CCA promised that they could provide new capacity in a short time.

Finally, the Texas prison system was under consent decrees to improve conditions, overcrowding included. In 1980, a federal judge ruled in favor of the plaintiff in the *Ruiz* lawsuit, and ordered the state to address its overcrowding problem. The state, however, dragged its feet on the matter, and on December 31st 1986, Judge Justice held Texas to be in contempt of court for failure to comply with previous court orders. Justice threatened fines as high as \$800,500 a day until the state complied with the court order. Newly elected governor Bill Clements met with Justice in January 1987 and promised him that the state would earmark additional funds for the construction of new prisons. Justice suspended the fines. The agreement regarding the *Ruiz* case made, however, the construction of new prisons a top priority for the state. Thus, with the beginning of the legislative session it was clear to the legislature that Texas had to create new prison capacity fast despite the fact that resources were very strained. This was the relevant backdrop of the private prison legislation.³³⁴

S.B. 251 was sponsored by Senator Ray Farabee (D) and received the full support of the governor. Farabee proposed a bill that required the private companies to guarantee 10%

³³⁴ Cummins, 32-35; Ethridge, 36-42.

cost savings compared to the public sector. The bill was promoted by two important lobbies. Private companies, namely CCA, Wackenhut and Detention Centers Inc., lobbied vigorously for the passing of the bill. Detention Centers hired former House Speaker Billy Clayton to promote their cause in the legislature.³³⁵ The second influential lobby was formed by depressed counties that were hoping to get a private prison, thus creating a new large employer in their area.

Opposition to the bill was scarce. The Texas Department of Corrections supported the bill because of the need to cut costs and increase capacity. Furthermore, since the bill called for the construction of new prisons and not the privatization of existing prisons, department employees were not concerned about losing jobs or benefits due to privatization.³³⁶ In fact, the establishment of private prisons presented a lucrative employment opportunity for some of the department managers.³³⁷ The Texas State Employees Union (TSEU) and the ACLU were the lone voices opposing privatization. The arguments against prison privatization questioned the ability of the private companies to guarantee lower costs, focused on potential harm to prisoners due to the companies' attention to the bottom line, and accused private companies of offering low pay and reduced benefits to their workers. The legislation, however, passed supported by an overwhelming majority of the legislators.

Following the passing of S.B. 251, the Texas Department of Corrections signed contracts with CCA and Wackenhut to build and manage two prisons of 500 inmates each. The

³³⁵ Bill Clayton, former Texas House Speaker, January 8, 2004 (phone interview); Cummins, 28.

³³⁶ Cummins, 48-49.

³³⁷ James Nauls, Texas Department of Criminal Justice, February 5, 2004 (phone interview).

private prison project, however, did not proceed smoothly. The companies failed to obtain the necessary capital for construction as they were required to be by the legislation and contracts. Elaine Cummins explains this failure to raise the necessary capital: “Both the financial and insurance communities expressed uncertainty and reluctance to get involved in this new venture of private prisons.” (91-92). The State was forced to step in. The legislature, in August 1987, authorized the issuing of bonds by local governments to finance the new private prisons.

The expansion

In 1990, the incarcerated population in Texas was 48,320. By 1999, the number grew by more than threefold to 146,930. Most of the increase occurred in the first half of the decade.³³⁸ During this period the Texas Department of Criminal Justice built seventy new facilities to accommodate this amazing growth in inmates. The department, however, did not meet this growth alone. Private companies experienced substantial growth during these years as well.

In 1991, the private prison pilot, established in S.B. 251, was expanded. H. B. 93 doubled the maximum number of beds in each prison from 500 to 1,000. As a result, the total capacity of the four private prisons increased to 4,000. The private prisons, however, were not the main vehicle of private prison expansion. In 1993, the state authorized the creation of 25,000 beds in state jails out of which 60% would be managed by the Texas Department of Criminal Justice (TDCJ) and 40% were designated for county management. The counties, however, either lacked the capacity to manage the state jails

³³⁸ Texas Department of Criminal Justice, “Closing of a Millennium: Reviewing the Past Decade,” 2000.

or found it more profitable to contract with private companies. Either way, the management of all 10,000 county beds was contracted out to private companies. Thus, the greatest single expansion of the private sector was virtually unplanned.³³⁹

Much of the private activity during the 1990s was not on the state level but on the local level. Many rural areas in Texas were searching for ways to bolster their slumping local economy and the nationwide increase in imprisonment presented an opportunity. County jails that had excess jail space started to contract out beds to other governmental entities for a fee. First, they contracted out beds to the TDCJ but soon it was apparent that profits could be made by contracting out to out-of-state entities: the federal government and other states. This practice was lucrative enough to create a supply of new jails that were established for the purpose of making a profit. These were facilities were labeled “spec jails”. In many cases, private companies were called in by the local authorities to run the jails and often to construct them. The initiative often originated with private companies that lobbied local authorities. The private sector increased its capacity, through this method, by almost 10,000 beds.³⁴⁰

The state did not authorize the expansion on the local level of private incarceration but state authorization was not legally required. In fact, expansion could have occurred without the passing of S.B. 251. While there is no direct connection between the Texas state privatization (the establishment of private prisons and private state jails) and the establishment of privately managed spec jails, it is plausible to assume that a causal

³³⁹ Michele Deitch, Attorney and Consultant, Center for Criminal Justice Initiatives (Texas), December 4, 2003 (phone interview).

³⁴⁰ Cummins, 78-83.

relationship between the two phenomena did exist. The state authorization offered private companies a foothold in the state. The fact that the state had already established a relationship with private firms probably made local authorities less apprehensive about working with such companies.³⁴¹ The private companies were by the mid-1990s deeply embedded in Texas.

During the 1990s, there were numerous incidents associated with private prisons that were reported in the media. The most publicized incident took place in a Brazoria County private prison in 1996. Prisoners were brutally attacked by correction officers and dogs and suffered bodily damage as a result. This incident was taped and the tapes reached media outlets a year later causing a public uproar upon their release. The Brazoria beatings led to a spate of lawsuits that forced Brazoria County to pay inmates \$2.2 million in a settlement. This incident and others led to legislation, in 1997, that increased regulation and government oversight of proprietary prisons.³⁴² No less important, was the impact such incidents had on the views within the TDCJ. The attitude of the TDCJ towards private prisons turned from initially favorable to skeptical.³⁴³ The incidents did not slow down privatization in the 1990s, but they may have had an effect at a later stage.

Failed expansion

In the 2003 legislative session, the chairman of the House Corrections Committee, Ray Allen (R), sponsored and promoted a number of bills (H.B. 1480, H.B. 1669 and H.B. 2190) that if passed would have expanded the number of private prison beds by between

³⁴¹ Nauls interview.

³⁴² Cummins, 123-125.

³⁴³ Nauls interview.

5,000 to 25,000 beds, and would have repealed the cap on the total number of private prisoners. The bills died in committee.³⁴⁴

The main rationale for the bills was to cut costs in rough economic times.³⁴⁵ Texas is currently facing one of its worse budget crises and the prison budget was projected to be slashed by 12%.³⁴⁶ In a report prepared for the legislature by the state Criminal Justice Policy Council, the running costs of state run and contract run state jails were compared.³⁴⁷ The report found a more than \$7 per day difference in per diem costs for offenders in favor of the contract jails (\$37.35 for public and \$30.13 for private). Proponents of the bills relied heavily on this report in arguing that privatization will lead to substantial cost savings. Furthermore, RFPs were to require 10% cost savings compared to the public alternative of the same quality.³⁴⁸

Opponents of the bill cast doubts on the validity of the report's comparisons – doubts that were bolstered by the Criminal Justice Policy Council's own reservations about taking the cost comparison at face value.³⁴⁹ Apart from challenging the claim that privatization would bring about cost savings, the opponents of privatization also objected that public prison personnel would lose their jobs through privatization; a claim hotly contested by

³⁴⁴ Scott Gilmore, Chief of Staff for Ray Allen, Chair of Texas House Corrections Committee, February 10, 2004 (phone interview).

³⁴⁵ Gilmore interview.

³⁴⁶ Laurie Shanblum, Senior Director Corrections Corporation of America, February 20, 2004 (phone interview).

³⁴⁷ Criminal Justice Policy Council, "Mangos to Mangos: Comparing the Operational Costs of Juvenile and Adult Correctional Programs in Texas," January 2003.

³⁴⁸ Michele Deitch, "White Paper on Prison Privatization Bills HB 1480, HB1669, and HB 2190," Submitted to the House Corrections Committee and Working Group, 28 March, 2003.

³⁴⁹ Testimony of Dr. Tony Fabelo, Executive director of Criminal Justice Policy Council in March 27, 2003 hearing of Texas House Corrections Committee.

supporters of the bill. There was little doubt, however, that the pay and benefits of prison guards would be reduced through privatization.³⁵⁰

Among the main opponents of privatization were the ACLU and AFSCME. AFSCME, admittedly, is not a politically powerful union in Texas which has relatively low unionization rates and “right to work” laws. A factor that apparently played a more important role is the fact that because there was no prison population growth and incarceration budgets were being cut, it was clear that any establishment of private prisons would have to come at the expense of jobs in existing public prisons.³⁵¹ Public prisons are large employers and politicians are reluctant to lose large employers in their district.

On the other side of the political struggle were the proponents of privatization. The makeup of the legislature appeared to be the most favorable it had ever been for privatization. The 78th legislature was the first in Texas history in which Republicans had a majority in both houses and Republicans were elected to all state-wide public offices. The Republican leadership’s stated support for privatization in general led some of the opponents of prison privatization to conclude that the real impetus for prison privatization was not cost-savings but a strong libertarian ideology.³⁵²

³⁵⁰ Jessica Farrar, Texas State Representative, March 4, 2004 (phone interview); Gilmore interview; Nauls interview; Shanblum interview.

³⁵¹ Texas Department of Criminal Justice, “Agency Strategic Plan for the Fiscal Years 2003-2007.”

³⁵² Deitch interview; Farrar interview.

Private incarceration firms were also active in promoting the privatization agenda. According to some reports, the private firms were paying lobbyists, in 2003, more than \$500,000 to promote their agenda which included the privatization of prisons.³⁵³ For years, private firms contributed money to the political campaigns of Texas politicians. In the 2000 election cycle, for example, the companies contributed \$361,293 to 156 recipients. Almost two thirds of the contributions went to Republican candidates (\$226,568), although the largest single contribution went to the campaign of the Democratic Speaker of the House Pete Laney. The private firms, naturally, supported Allen's bills.³⁵⁴

Although, the political struggle about privatization was intense, it was not much of a public issue. As one CCA senior director explained: "The thing is that politicians – and the public more generally – really don't care about prisons".³⁵⁵ Public interest in prison privation is weak, although it does temporarily pick up when incidents, such as Brazoria, are made public – especially when such incidents affect the public purse due to litigation.³⁵⁶

The budgetary crisis, strong private prison company support, Republican domination of the legislature, and an apathetic public, however, were not enough to get the privatization bills passed. One reason was that the Republican Party was, in fact, not fully behind the bills. Despite the general support for privatization, some Republican legislators, in the

³⁵³ Texans for Public Justice, "Lobby Watch: The 'Big House' Hits the Statehouse." 15 May, 2003; Deitch interview.

³⁵⁴ Shanblum interview; Gilmore interview.

³⁵⁵ Shanblum interview.

³⁵⁶ Deitch interview.

House, and more so in the Senate, were reluctant to support prison privatization. This was especially true of legislators who had a public prison in their district, so parts of their constituency would have been adversely affected by the closing of the prison or pay cuts for its employees. Second, private company campaign donations do not necessarily translate into greater political support for privatization. The biggest benefactor of the private prison companies' financial largesse in 2000, Speaker of the House Pete Laney, is, in fact, an opponent of prison privatization.³⁵⁷ Finally, as mentioned before, privatization in 2003, in contrast to 1987, was not a response to an urgent overcrowding problem. Top private prison officials pointed out in interviews that in order to have prison privatization both a budgetary crisis and overcrowding are necessary prerequisites.³⁵⁸

None of my interviewees predicted a major expansion of private prisons in Texas in the near future. The failed attempt in 2003 demonstrated the difficulties facing privatizers in a state that has been very hospitable to private prisons in the past. An unexpected large increase in the number of inmates could present a new opportunity for prison privatization through the addition of new private units. At the moment, however, such an increase seems unlikely.

³⁵⁷ Laney interview.

³⁵⁸ Shanblum interview; Steve Owen, Public Office Director for Corrections Corporation of America, April 9, 2004 (phone interview).

English incarceration

Figures and general contours

In 2003, there were 6,816 prisoners in privately managed facilities in England and Wales, constituting 9.5% of the total prison population of 74,162. The projected opening of two new facilities housing 1,290 prisoners would bring the private prison share to around 11%.³⁵⁹ The first privately managed prison, Wolds, opened its gates in April, 1992, housing 320 inmates.

The 1991 Criminal Justice Act

As is true of prison privatization in Texas, and in the United States generally, prison privatization in England resulted from a confluence of different factors and was several years in the making. The relevant political backdrop to the privatization of prisons was the rise of the political neo-liberal right with the election of Thatcher in 1979. Thatcher not only was interested in reducing the role of the public sector, she was also fostering an image of the conservative party as the party of “law and order”. The conservatives were to restore order by imposing stiffer penalties on criminals. This appealed to the British public but also led to the overcrowding of prisons.³⁶⁰ The rapid growth in the prison population and the additional problem of aging facilities meant that new prisons had to be built. As was the case in the United States, this factor facilitated the rise of the private prisons.

³⁵⁹ Geoff Leybourne, Home Office Correctional Services, Office of Contracts and Competitions, Letter from May 6, 2003; “Prison Population Brief: England and Wales,” (2003).

³⁶⁰ James et al. (1997).

The first proposal for the privatization of prisons was published by the new yet influential think tank: the Adam Smith Institute.³⁶¹ Another influential proponent of prison privatization was Lord Windlesham, a leader of the conservative party in the House of Lords and a criminology scholar, who in 1987 wrote to Thatcher arguing that remand prisons (i.e., pre-trial prisons) were proper targets for privatization.³⁶² Thatcher replied, however, that privatization was not on the agenda as Douglas Hurd, the Home Secretary, made clear in the House of Commons. Windlesham's proposal, nevertheless, did create a special focus in subsequent proposals on privatizing remand prisons.

Despite the misgivings of the Home Secretary regarding prison privatization in 1987, privatization was not without political support. The parliamentary Select Committee on Home Affairs visited the United States in 1986, and on the strength of its visits to two CCA facilities, it produced a very positive majority report (Labour committee members dissented) regarding the potential of prison privatization.³⁶³ The report (1987) stressed the financial advantages of building private prisons and the shorter timeframe for their completion in comparison to public construction. Aside from cost-containment, prison overcrowding also made prison privatization proposals more popular with the government as a way of increasing the capacity of prisons.

³⁶¹ Madsen Pirie, President of Adam Smith Institute, June 17, 2002; James et al.(1997).

³⁶² Lord Windlesham, *Responses to Crime: Volume 2, Penal Policy in the Making*, (Oxford: Clarendon Press, 1993): 275-280.

³⁶³ James et al. (1997), 50; Stephen Nathan, "Prison Privatization in the United Kingdom," in Andrew Coyle, Allison Campbell and, Rodney Neufeld (eds.) *Capitalist Punishment: Prison Privatization and Human Rights* (London: Zed Books, 2003), 163.

A third factor that influenced prison privatization was the existence of a private lobby. Private prison companies were, by that time, actively lobbying for prison privatization. A private prison consortia, by the name of Contract Prisons, set out to persuade the government that prison privatization was the right course of action. CCA, the company that left such a positive impression on the Home Affairs Committee, was also deep in the political fray by this time. In 1987, CCA established a British company, UK Detention Services Ltd., partnering with two British construction companies that were regular contributors to the Conservative Party. The company, according to its own admission, was deeply involved in lobbying for privatization and arguing for privatization enabling legislation. The influence of the private prison industry was enhanced by its strong connections with the Select Committee on Home Affairs. The chair of the committee, Sir Edward Gardner, after his retirement from parliament became the chair of Contract Prisons PLC, and John Gardner, A conservative MP, was the former director general of the British Security Industry Association.³⁶⁴

While the private industry was advocating for privatization enabling legislation, the unions were opposing government policy. Far from weakening government determination to privatize prisons, however, the union opposition might have actually spurred privatization. Privatization could have been part of the government's strategy to reduce union power.³⁶⁵ The existence of this connection, however, has yet to be substantiated.

³⁶⁴ James et al. (1997), 44.

³⁶⁵ James et al. (1997), 48

These factors created increasing pressure for privatization during the late 1980s and early 1990s. The decision to privatize was ultimately the prime minister's decision taken on ideological grounds. There is little doubt that the Conservative success in the 1987 elections emboldened Thatcher and her government in pursuing radical policies.³⁶⁶ The Criminal Justice Act passed in 1991 enabling the Home Office to contract out whatever prisons it saw fit.

Privatization from Conservatives to Labour

The first private prison in England, Wolds, was opened by 'Group 4' in April 1992. Although the Conservative Government presented private prisons to the public as an "experiment", by 1993 it was clear that they were more than that when the government announced that all new prisons would be privately built and operated.³⁶⁷ Opposition to prison privatization at this time was intense. Leading the way was the Prison Officer's Union that threatened industrial action in a bid to prevent further privatization.³⁶⁸ The Home Secretary, Michael Howard, however, asked the high court for an injunction blocking industrial action which the high court judge granted.³⁶⁹ In 1994, Howard sponsored new legislation that rendered the unions unable to strike.³⁷⁰

With the unions de-clawed Howard could proceed with the conservative privatization plan. Howard set a goal of privatizing at least 10% of the prisons. He argued that for real

³⁶⁶ James et al. (1997), 56-57.

³⁶⁷ Nathan (2003), 164.

³⁶⁸ Anthony Doran, "Home secretary's showdown with militant prison union," *Daily Mail*, 18 November, 1993.

³⁶⁹ John Mason, "Prison officer's dispute curbed", *Financial Times (London)*, 19 November, 1993.

³⁷⁰ Criminal Justice and Public Order Act 1994, section 127.

competition to emerge and affect the stagnated prison sector a minimal number of prisons should come into existence.³⁷¹ Prison privatization was not a popular goal. The main prison advocacy groups, the Howard League for Penal Reform and the Prison Reform Trust, were skeptical about the benefits of privatization.³⁷² Howard, however, pursued prison privatization arguing that private prisons will improve the service in terms of cost and quality.³⁷³ At the time, however, this assumption could not have been based on the British experience. It was only in 1996 that the Home Office published research regarding the first private prison, Wolds, and the research did little to support Howard's assumptions regarding private prison superiority.³⁷⁴

Labour was adamantly opposed to prison privatization while in opposition. In response to Howard's statements proposing to expand prison privatization, Tony Blair, the shadow home secretary in 1993, labeled the privatization program as: "(...) an extraordinarily foolish diversion of time and energy from the real tasks of prison reform and fighting crime."³⁷⁵ With the 1997 elections looming, shadow home secretary, Jack Straw, pledged before the Prison Officers' Association annual conference to put the breaks on prison privatization arguing that it was "morally unacceptable" for private firms to incarcerate people.³⁷⁶

³⁷¹ Michael Howard, Conservative Party Leader and former Home Secretary, February 10, 2003.

³⁷² Alan Travis, "Howard Rushes Prison Plans," *The Guardian*, 3 September, 1993.

³⁷³ Howard interview.

³⁷⁴ Nathan (2003).

³⁷⁵ "Howard Rushes prison plans."

³⁷⁶ James Hardy, "Straw Pledges to Halt Prison Privatization," *Press Association*, 21 May, 1996.

Labour privatization

Given these strong statements over the course of several years by the leaders of Labour it was expected that a Labour takeover would terminate the prison privatization project. In fact, not only did Labour not end prison privatization and re-nationalize the private prisons, it contracted for more new private prisons than did the conservatives when in power. Jack Straw, an alleged principled opponent of private prisons, was designated the new Home Secretary in Tony Blair's first government. Straw declared during the election campaign that Labour will not sign new privatization contracts. On June 19, 1997, however, Straw invited private bids for two new contracts.³⁷⁷ The new contracts were justified by Straw as a necessary measure for dealing with the dramatic growth in the prisoner population combined with financial constraints.³⁷⁸ Labour's about face on private prisons was not just an expedient response to the dual challenge of an increasing population and a tight budget. The minister responsible for prisons in the home office, Joyce Quin, stressed that Straw's view of private prisons actually changed for the better after he got to personally visit such prisons.³⁷⁹ In 1998, Quin articulated the change in the government view of private prisons in a meeting of the Home Affairs Select Committee: "It's fair to say that some of the very keen concerns that were expressed from the outset have turned out to be much less alarming in practice. (...) The feeling that people would only be concerned with profit and not with the situation and needs of the people they were looking after is not borne out."³⁸⁰

³⁷⁷ Alan Travis, "Private Prisons," *Guardian*, 26 August, 1997.

³⁷⁸ John Deane, "Straw's go-ahead for more private prisons," *Press Association*, 19 June, 1997.

³⁷⁹ Joyce Quin, MP and former Minister responsible for prisons, February 12, 2003.

³⁸⁰ Michael Clarke, "Minister: We were wrong about private prisons," *Press Association*, 5 May, 1998.

By mid-1998 it was made clear by Jack Straw to the unions that the government intended to stick with the existing private prisons and that new prisons would be established in the framework of the PFI, meaning that they would be designed, built and operated by the private sector. Straw justified this policy by referring to a recent cost comparison conducted by the Home office that showed that private jails were eight to fifteen percent cheaper than their public counterparts, mainly due to the lower wages paid in private prisons.³⁸¹ Straw also rejected union demands for the repeal of the 1994 section in the Criminal Justice and Public Order Act that made prison officer strikes illegal.

These developments were not greeted with equanimity by the Prison Officers' Association (POA). The POA vowed to fight prison privatization.³⁸² The secretary for the home office, David Blunkett, following Tony Blair's attack on union "wreckers", pinpointed the POA as the prime examples of unions that wreck the public services.³⁸³ By August, 2002, however, POA elected a new chair, Colin Moses. Moses adopted a more moderate stance on private prisons than his predecessor. One manifestation of this new approach is that the POA has begun recruitment of private prison officers.³⁸⁴

Within the Labour party there have been some criticism among backbenchers regarding private prisons but within the leadership of the party private prisons have not been challenged. The conservatives have consistently supported private sector involvement in

³⁸¹ Alan Travis, "Prison Staff Snub Straw," *The Guardian*, 20 May, 1998.

³⁸² Ian Burrell, "Election of union militant alarms prison chiefs," *The Independent*, 25 January, 2002.

³⁸³ Charles Reiss, "Blunkett names and shames the union 'wreckers'," *The Evening Standard*, 5 February, 2002.

³⁸⁴ Alison Liebling, Institute of Criminology, University of Cambridge, February 7, 2003 (phone interview); Alan Travis, "Prison Officers get right to strike," *The Guardian*, 21 May, 2003.

prisons often pointing out that prison privatization is a conservative policy that was opposed by the Labour while in opposition for electoral considerations and then immediately adopted once in power.³⁸⁵ According to the former Home Secretary and current leader of the conservative party, Michael Howard, the main difference between the conservative and Labour policy regarding prison privatization is Labour's greater ease in promoting and implementing the policy. Since Labour has come to power there is no real political opposition to private prisons in England.

A *Guardian* sponsored poll from March 2001 found that 60% of the public thought that prisons should be brought back into the public sector.³⁸⁶ The lack of a political response to public opinion could be explained by the fact that politicians would be hesitant to reverse policy based on one poll. More importantly, it is likely that the public view is not a very strong one so politicians are not overly concerned about "standing up" to a popular view. As one journalist quipped: "Crime shifts votes at elections: what happens to those convicted of crime doesn't."³⁸⁷

The private industry has voiced its interest in capturing about one quarter of the prison market in England and Wales.³⁸⁸ The government and the prison service have not capped the private share at any exact number so this could be an attainable goal from a political standpoint. The government, for its part, has been using the specter of private sector expansion to spur improvements in the public sector. The government threatens the

³⁸⁵ Anne Widdicombe, MP, questioning of Home Secretary Straw, House of Commons, Hansard Debates, 12 February, 2001.

³⁸⁶ Nathan (2003).

³⁸⁷ Peter Preston, "Comment and Analysis," *The Guardian*, 6 August, 2001.

³⁸⁸ Nathan (2003).

worst-performing prisons with privatization inducing immediate improvements in these prisons.³⁸⁹ Prison privatization appears to be set for further expansion in England.

³⁸⁹ David Barrett, "'Worst jails' improve to avoid private takeover," *Press Association*, 3 December, 2003.

Chapter 3: Political Systems

Texas is home to the largest private prison system in the world. In Massachusetts, by contrast, there is not a single private prison. This difference is hardly surprising given what we know, or think we know, about the two states and their political systems. Massachusetts's popular image is that of a left-of-center liberal state while Texas is a conservative right-wing bastion. No wonder there is so much privatization in Texas and so little in Massachusetts! Public images aside, there do seem to be important differences between political systems – differences that could systematically account for variation in the extent of privatization. This chapter considers, and dismisses, some of these differences as independent variables that might explain privatization patterns across the different case studies explored in this work. Surprisingly, political system related variables do not explain much of the variation in privatization of delivery.

Three factors are considered. First, apart from the formal institutions, different political systems also tend to embody different political traditions. A political system's tradition is a frustratingly difficult to pin down but there is little doubt that it is there. There really are differences between how politics are viewed and practiced and the values that underpin politics in Massachusetts and Texas. An important literature exists describing these differences in terms of political culture or political ideology.

Second, no two legal frameworks are alike. The legal code could shape and constrain the development of new policy. Political actors, therefore, in different political systems face different incentives and challenges posed by the legal system they operate in.

Third, political systems often differ in the makeup of their basic political institutions. The relevant comparison for the study of this dimension is states, not federal states. While Texas and Massachusetts are by no means similar in their institutional makeup,³⁹⁰ the basic structure of a division into three branches of government and a complex relationship with federal and local government applies to both places. England with its parliamentary centralized political system is dramatically different and these differences are expected to impact privatization politics.

This chapter will examine the influence of three political system related factors on privatization of delivery. First, I will explore political culture and political ideology and assess their relevance in the different case studies. Second, the significance of legal factors for privatization in the three political systems will be examined. Indeterminacy plays a central role in explaining why both political culture and legal variables have little effect on privatization of delivery. Finally, I will study the importance of differences in the political structure – centralized vs. fragmented – for privatization dynamics. In discussing the reasons for the absence of any clear effect of this type of variable on privatization, I will introduce the concept of “entry points” as a countervailing force to veto points.

³⁹⁰ For instance, in Massachusetts the legislature meets every year while the Texas legislature holds biennial sessions.

Political culture

Daniel Elazar defines political culture as “the particular pattern of orientation to political action in which each political system is embedded.”³⁹¹ Elazar separates the American states into three broad categories of political culture: individualistic, moralistic and traditionalistic political cultures.³⁹² The individualistic political culture gives primacy to the market over governmental and nongovernmental modes of cooperation. The private interest reigns supreme: the main justification for government is to encourage private initiative and to maintain a market-friendly environment. As is true of any other line of work in this political culture, politics is viewed as a basically self-interested practice, and thus patronage is common and even expected in the individualistic political culture. The attitude toward the bureaucracy in the individualistic political culture is ambivalent. On the one hand, it can get in the way of personal political patronage but on the other hand it is recognized as an efficient institution for regulating the economy.

In the moralistic political culture, politics is considered an exercise of power for the betterment of society. Moralistic political culture approves of the use of communal power, preferably nongovernmental but also governmental, to promote the common good even if this interferes with private activities. Finally, the traditionalistic political culture values a hierarchical social order in which the elite rule and others do not participate in the political process. Government’s role is to preserve power in the hands of the elite and

³⁹¹ Daniel J. Elazar, *American Federalism: A View from the States*, (New York: Harper & Row Publishers, 1984): 109.

³⁹² The development of distinct political cultures was brought about, according to Elazar, by the influence of different immigrant groups on the region which they inhabited. The New England states tend to be moralistic (e.g., New Hampshire), the Midwest states tend to be individualistic (e.g., Indiana) and the Southern states are usually traditionalistic (e.g., Mississippi).

little more. The bureaucracy is regarded with suspicion because it could potentially undermine existing informal networks and the market is treated with some ambiguity because of its ability to both reinforce the order and to reshuffle it.³⁹³

Many political scientists made use of Elazar's study in their work recognizing that it was more than an exercise in classification. The study offered analysts an interesting new dimension for the comparison of societies and public policy. Joel Lieske, for example, argues that there is a strong relationship between political culture and the incidence of certain social pathologies (e.g., poverty or teenage pregnancy) and Lawrence Mead shows that Moralistic states have been more successful at adopting the new federal Temporary Assistance for Needy Families (TANF) policies.³⁹⁴ Obviously, privatization of delivery could also be affected by political culture. Three studies examine this possibility. Bryan Hassel applies Elazar's political culture classification to his study of charter schools.³⁹⁵ Hassel admits that it is difficult to predict what type of political culture would embrace charter schools and what culture would not. Nevertheless, Hassel believes that traditionalistic political cultures would shy away from the innovative concept of charter schools. Hassel's quantitative analysis, however, does not bear this out. Byron Price met with more success in his utilization of the Elazar classification in the case of prison privatization.³⁹⁶ Price hypothesized that one should expect more prison privatization in individualistic states that give primacy to the market than in

³⁹³ Elazar (1984), 114-120.

³⁹⁴ Joel Lieske, "Regional Subcultures of the United States," *The Journal of Politics*, Vol. 55, 4, (November 1993): 888-913; Lawrence M. Mead, "State Political Culture and Welfare Reform," *The Policy Studies Journal*, Vol. 32, 2 (2004): 271-296.

³⁹⁵ Hassel (1999), 22-30.

³⁹⁶ Byron Eugene Price, "Economics, Ideology, Politics, and Profits: What Drives Prison Privatization?" Ph.D. Dissertation, Mississippi State University, August 2002.

traditionalistic or moralistic states. Price's analysis, indeed, establishes a positive correlation between individualistic political culture and prison privatization. Finally, Wolfgang Bielefeld and John Corbin argue that the number and role of human service delivery nonprofits would be greater in moralistic political cultures than in traditionalistic political cultures because they put more of an emphasis on welfare (and invest more accordingly).³⁹⁷ The writers supported their argument by comparing nonprofit human service delivery in Minneapolis, Minnesota (moralistic) to Dallas Texas (traditionalistic-individualistic).

There are, however, two major problems in applying Elazar's political culture classification to a study of privatization of delivery. First, classifying the different states is anything but straightforward. Elazar, for example, considers Massachusetts to be an individualistic-moralistic state. According to Tom Rice and Alexander Sumberg's civic engagement index, however, Massachusetts ranks second in the nation in its level of civic engagement, a measure that should surely place it squarely in the moralistic category.³⁹⁸ It is unsurprising that there are difficulties in categorizing such an intangible property as political culture. Elazar's categorization was, by and large, intuitive.³⁹⁹ Assigning the three political systems examined in this study to political culture categories is further complicated by the English case that is, as is true of non-American systems in general, not accounted for in the original Elazar classification and does not easily fit into any one of his proposed categories.

³⁹⁷ Wolfgang Bielefeld and John J. Corbin, "The Institutionalization of Nonprofit Human Service Delivery: The Role of Political Culture," *Administration and Society*, Vol. 28, 3 (November 1996): 362-389.

³⁹⁸ Tom W. Rice and Alexander F. Sumberg, "Civic Culture and Government Performance in the American States," *Publius*, Vol. 27, 1 (Winter 1997): 99-114.

³⁹⁹ Lieske, (1993).

A more serious problem than that of classification, however, exists. The three studies mentioned above, of how political culture applies to different aspects of privatization, reveal that the description of the three different political cultures does not suggest any clear predictions regarding the extent of privatization of delivery. There are reasons to expect privatization of delivery in each type of political culture. As Price argues, individualistic political cultures place the market at the center. Hence, privatization appears to be a logical policy for these systems to adopt. Yet, Elazar argues that individualistic political cultures are also rife with patronage, suggesting that politicians would find it difficult to eliminate public sector jobs that are a common prize for political support in a patronage-based system. A moralistic-political culture does not shy away from public intervention for the common good. Yet, Elazar claims that in this type of political culture, the public prefers non-governmental organizations to execute the government policy. In a moralistic political culture one might expect a privatization in which the main beneficiaries are nonprofit organizations and not commercial ones. Finally, while the traditionalistic political culture discourages direct government interference, it is not very supportive of the market either. Privatization could occur if it is viewed as a way to limit the state but not if it redistributes power away from the traditional brokers.

Because it is both difficult to classify the three political systems using Elazar's categories and to generate clear hypotheses regarding how political culture would influence privatization, it might be helpful to seek an alternative approach. One possibility is to opt

for an inductive approach. What do we know about the political cultures of our *specific* case studies and how would we expect these political cultures to affect privatization of delivery? In what follows, I will examine each political system in turn.

In recent official documents of the Texas State Government the following two points on Government Philosophy are included:

“Government should be limited in size and mission, but it must be highly effective in performing the tasks it undertakes.

Decisions affecting individual Texans are best made by those individuals, their families, and the local governments closest to their communities.”⁴⁰⁰

The preference for small government in Texas is anything but new. It goes at least as far back as the Reconstruction Era in the wake of the Civil War. The Texans responded negatively to what they viewed as Northern encroachment on the Texas lifestyle and the result was a constitution, codified in 1876, that reflects strong suspicion of government and designs state government in a way intended to, above all, curb its power:⁴⁰¹ The legislature meets only on a biennial basis for 140 days; the governor has to contend with a large number of elected officials that are not directly subordinate to her; and the hurdles to new legislation are numerous and significant (e.g., it is practically impossible to override the governor’s veto). All these measures are intended to keep the government in check.

⁴⁰⁰ Texas Department of Mental Health and Mental Retardation, “The Strategic Plan for Fiscal Years 2003-2007,” May 2002, 5.

⁴⁰¹ Richard H. Kraemer, Charldean Newell, David F. Prindle, *Texas Politics*, (Belmont, CA: Wadsworth/Thomson Learning, 2002), 36-44.

Texas is also a conservative state. Public spending in most categories is amongst the lowest in the nation and the people of Texas score among the bottom ten states on Erikson, Wright and McIver's liberalism index.⁴⁰² This conservatism is also expressed in a general antipathy towards unions that is legally expressed by a right-to-work law passed in the 1950s.⁴⁰³ Accordingly, union membership in Texas, at about 5.2% of the workforce in 2003, is among the lowest in the nation, ranking 46th overall.⁴⁰⁴

Massachusetts, in contrast to Texas, is best defined as a liberal state. Erikson et al. rank Massachusetts second on their liberalism index behind frontrunner Nevada.⁴⁰⁵ Massachusetts is also one of the more generous states in education and social spending. Massachusetts ranks fifth in the nation in education spending per pupil (compared to Texas which is ranked 30), fifth in Public Welfare per capita (Texas comes in at 42), and seventh in overall expenditure per capita (Texas is ranked last).⁴⁰⁶ In contrast to Texas, Massachusetts union membership is slightly above the national average of 13.9% at 14.2%.⁴⁰⁷ Until not too long ago politics tended to be patronage-based and conservative

⁴⁰² Robert S. Erikson, Gerald C. Wright, and John P. McIver liberalism index (see Table 2.2 (15): "Ideological Identification in the United States, 1976-88") in *Statehouse Democracy*, New York: Cambridge University Press, 1993). Texas ranks forty second out of the forty eight continental states. Liberalism is measured with reference to such issues as public attitude regarding the progressiveness of taxation, welfare spending and the death penalty.

⁴⁰³ *Texas Politics* (2002), 13.

⁴⁰⁴ U.S. Bureau of Labor Statistics, "Union Members in 2003: Table 5, Union Affiliation of Employed Wage and Salary Workers by State," January 21, 2004.

⁴⁰⁵ *Statehouse Democracy* (1993), 15.

⁴⁰⁶ U.S. Census Bureau, "Table 11. States Ranked According to per Pupil Elementary-Secondary Public School System Finance Amounts: 2001-2002," <http://ftp2.census.gov/govs/school/11!A1>; Federal, State and Local Governments, "1998 State Government Finance Data," <http://ftp2.census.gov/govs/state/98states.xls>; "States Ranked by Revenue and Expenditure Total Amount and Per Capita Total Amount: 1998," <http://ftp2.census.gov/govs/state/98rank.xls>.

⁴⁰⁷ Census Bureau, "Union Members in 2003."

but in the last four decades the Massachusetts Democratic Party has become more liberal leading to a transformation of Massachusetts politics.⁴⁰⁸

It is difficult to compare political cultures across societies but there are several easily-identifiable relevant characteristics in which England differs from the American states. First, in England there is a relatively rich tradition of state delivery of services in almost every major social field. The biggest difference is in the field of healthcare in which the publicly provided and funded NHS dominates English healthcare while in the United States well over half of healthcare expenditure comes from private sources and the delivery of services is, accordingly, mainly private.⁴⁰⁹ The long-standing reliance of the English public on publicly provided services might have created a special allegiance to the public sector. Surveys demonstrate that the British public is more trusting of its civil servants than the American public. While nearly 55% of Americans disagreed with the statement “Most civil servants can be trusted to do what is best for the country,” only 40% of British respondents disagreed.⁴¹⁰ Second, the English public appears to be more egalitarian than the American public. According to cross-national surveys, 33% of British respondents agree that the state should take more responsibility to ensure that everyone is provided for while only 14% of Americans agree with this statement.⁴¹¹ Clearly, the British (the English included) public believes in more state intervention to guarantee provision than the American public.

⁴⁰⁸ Richard A. Hogarty, *Massachusetts Politics and Public Policy: Studies in Power and Leadership*, (Boston: University of Massachusetts Press, 2002): Chapter 1.

⁴⁰⁹ Jacob Hacker, *The Divided Welfare State: The Battle over Public and Private Social Benefits in the United States*, (New York, Cambridge University Press, 2002), 185.

⁴¹⁰ International Social Survey Programme, “Role of Government III,” V54, 1996.

⁴¹¹ Ronald Inglehart, Miguel Basanez and Alejandro Moreno, *Human Values and Beliefs: a Cross-Cultural Sourcebook*, (Ann Arbor: The University of Michigan Press, 2001): V252.

How would we expect such differences in political culture to affect privatization policy?

Taking into account the Texan suspicion of government and preference for limited government, it is reasonable to assume that Texans would prefer even publicly funded services to be out of the hands of the state. Furthermore, given the particular animosity in Texas to unions, one should expect union protests against privatization (which exist in all three political systems) to be ineffective. Based on differences in political culture, one would expect then that privatization would be more widespread in Texas because Texans show a greater distrust for the state and for unions than do the citizens of the two other political systems.

The evidence, however, belies these expectations. In the case of incarceration, Texas leads not only England and Massachusetts but also any other political system in the world in the number of its privately incarcerated inmates. Even so, the incarceration rate in private facilities in Texas and England is almost the same (10.4% in Texas and 9.5% - soon to be 11% - in England). In the case of education, the share of publicly-funded Texas school children in charter schools is well below 2% as is the case in Massachusetts and for other types of semi-private arrangements in England. Finally, in mental health care, Texas is actually far behind Massachusetts and England with respect to its share of publicly funded patients treated in private settings although this will probably change soon.

These comparisons, however, are far from conclusive given the small number of case studies. Political culture might be an important determinant of privatization despite the lack of support for this proposition in the case study comparison. The case studies, however, highlight two reasons for doubting the significance of political culture in this context. First, political culture is *heterogeneous* and it is not necessarily the most prevalent strand in political culture that influences policy. The rise to power of Thatcher in England, for example, brought about a distinct movement to the right in social policy.⁴¹² In contrast, public support for welfare spending increased, rather than decreased, during this period. In the Texas Democratic Party there is a strong liberal strand that was best embodied by Lyndon B. Johnson and his “Great Society.” Second, and perhaps more importantly, while privatization of funding appears consistent with *laissez faire*, the relationship between political ideology and privatization of delivery is more complex. In theory, there is no necessary link between the distribution of goods and services (less or more equal) and the mode of distribution (private or public). As a consequence, the relationship between political ideology and privatization of delivery is essentially one of *indeterminacy*. In England, one conservative politician said that: “the public doesn’t care who provides the service as long as it is free at the point of delivery.”⁴¹³ This assertion has been backed by a recent poll of the public’s attitude to healthcare delivery in which the majority claimed that provider identity – public or private – was not a concern for them.⁴¹⁴ In Texas, a former House Speaker, who is

⁴¹² Peter Taylor Gooby argues in his analysis of public opinion surveys in Britain: “Support for state welfare increased among all social and political groupings and became more unified as the 1980s progressed,” in Paul Pierson, *Dismantling the Welfare State? Reagan, Thatcher and the Politics of Retrenchment*, (New York: Cambridge University Press, 1994), 147.

⁴¹³ Burns interview.

⁴¹⁴ In a poll ordered by the British Medical Association, an organization that holds to an anti-privatization agenda, 51% of the respondents thought that things would improve if private providers were allowed to

considered a conservative, objected to the notion that limited government implies privatization of public services. Government should be limited, according to the former speaker, in its spending and responsibilities, but where it already does hold responsibility for a service it should deliver it.⁴¹⁵ Privatization of delivery simply does not neatly overlap with the conservative/right-wing – liberal/left-wing divide in political ideology.

Differences in political culture/ideology do not appear to have sufficient power in explaining the privatization pattern in the three case studies. There are also good reasons to doubt that political culture would be any more useful when applied to other political systems. This is not to say that political culture may not be applied with more fruitful results to cases in which privatization of funding is in question and not privatization of delivery.

Legal chutes and ladders

The significance of legal factors in determining the extent of privatization seems indisputable. If a law or a constitutional amendment exists that prohibits (or empowers) a type of provider, public or private, from providing a specific publicly-funded service,

participate in NHS delivery of medical services, 25% said things would be the same, and 16% responded that private provision would only make things worse (Nigel Hawkes, "Public Prepared to give up on NHS and Travel Abroad," *The Times*, 1 July, 2002). This survey flies in the face of the common wisdom among policy analysts that for a long time argued that the public's attachment to the NHS is such that any attempt to change the delivery mix would be opposed by the vast majority of patients (for an example of this view see *Dismantling the Welfare State?* 133-136.)

⁴¹⁵ Laney interview. One reason a conservative might hold to such a view is precisely because he is a *conservative* and as such leery of any changes in current arrangements. A more important insight, however, is that it is possible to separate a belief in the virtue of limited state intervention from a belief in the virtue of the private market under all circumstances. Some people might believe that government responsibility should be limited to a small range of functions but at the same time argue that for those functions the government should fully and solely responsible.

then it seems reasonable to assume that the extent of privatization will be almost wholly determined by the law.⁴¹⁶ Thus, a constitutional amendment prohibiting the use of public money on private prisons, for instance, would virtually block any privatization in incarceration. The legal factor, therefore, appear to be very significant in determining the extent of privatization and its effect is so strong that it overrides the influence of any other factors.

Treating laws as independent variables, however, is problematic. Laws and constitutional amendments do not arise in a vacuum. Laws are written by legislators who are driven by a set of considerations that could be directly related to privatization. A law that promotes privatization could be designed for explicitly this purpose. The independent variable in this case is not the law itself but the factors that led the legislators to pass the law in the first place (e.g., campaign contributions from potential private contractors or a belief that private provision is more efficient). In such a case, the law should be viewed as an intermediate variable and not as an independent variable.

In Massachusetts, the so-called Pacheco Law of 1993, a law that prohibits privatization unless worker rights are guaranteed and a 10% cost saving is projected, constitutes a good example of a law that should be considered as an intermediate variable because the legislators passed it with the clear intention of slowing down privatization. Should we then abandon the notion of legal factors as determinants of privatization? Not quite. There are cases in which a law, or a constitutional amendment, was passed in one

⁴¹⁶ For an example of the use of the legal factor as an independent variable in a study of privatization see Bachman (1996).

political context, yet it still remains influential even when the political context has changed considerably. In this vein, there are laws that could shape the privatization process even if their authors did not have privatization in mind when drafting the bill. In such cases, I believe, it is permissible to consider these laws as independent variables because they are not shaped by other privatization-related variables. In what follows I will consider the legal environment in the three political systems and how it affects privatization of delivery. I will only discuss legislation that could be considered as a legitimate independent variable, i.e., legislation that was not initially intended to affect privatization.⁴¹⁷

In England, there is no written constitution and there are no laws on the books that prohibit privatization. Laws that promote privatization, such as the laws passed that authorized the construction of private prisons in the early 1990s, were devised precisely for that purpose, therefore, will not be discussed here. While no laws exist to prohibit privatization, there were instances in which civil servants, usually belonging to local government, rejected faith-based organization attempts to become involved in the delivery of publicly funded services, arguing that such activities would violate the separation of church and state.⁴¹⁸ The current Labour government has acted to dispel any

⁴¹⁷ The distinction between the two types of political contexts, privatization-related and other-related, is admittedly a difficult one to draw. First, any distinction that is predicated on some knowledge of the intentions of the framers of the law is on shaky grounds because it is not always possible to ascertain legislative intent. Second, there are significant gray areas in which the intent of the law was not to promote or restrict private delivery but an important subgroup of private providers. Most important among these subgroups, for our purposes, are religious providers. Nevertheless, this distinction is necessary in order to appreciate how at times laws have unforeseen independent effects on policy in ways unanticipated by their framers, while in other cases they are intentionally shaped for achieving the observed policy outcome.

⁴¹⁸ Interview with David Rayner, Head of Community Participation Branch of the Inner City Religious Council in the Deputy PM's Office, 4 February, 2003; Interview with Nathan Oley, National Coordinator for "Faithworks", 4 July, 2002.

notions that faith-based delivery is somehow in breach of the law. In a publication issued in 2002 by the Local Government Association and sponsored by the Office of the Deputy Prime Minister and the Home Office, not only is it made clear that local government relations with faith communities are permissible, the case is made for their desirability.⁴¹⁹

The legal situation in the United States is markedly different. The First Amendment famously states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” In 1947, in *Everson v. Board of Education*, the United States Supreme Court adopted a strict interpretation of the amendment that restricted public aid to religious institutions. Justice Hugo Black who delivered the decision on behalf of the majority wrote: “The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach.”⁴²⁰

This ruling was the basis for a strict interpretation of the first amendment that did not allow for public support of religious schools or of the religious mission of faith-based organizations. This interpretation of the first amendment is not the only possible one and it has been repeatedly challenged.⁴²¹ The ramifications of this decision for privatization, however, seem to be considerable. An important form of private provision, i.e., sectarian schools, are ruled out from receiving public funds, and faith-based social service

⁴¹⁹ Local Government Association, “Guidance on Community Cohesion,” (London: LGA Publications, 2002).

⁴²⁰ U.S. Supreme Court, *Everson v. Board of Education of Ewing TP.*, 330 U.S. 1 (1947).

⁴²¹ For critical accounts of the Supreme Court’s interpretation and alternative readings see Stephen V. Monsma and J. Christopher Soper, *The Challenge of Pluralism: Church and State in Five Democracies*, (Lanham, Md. : Rowman & Littlefield, 1997), chapter 1; or Charles L. Glenn, *The Ambiguous Embrace: Government and Faith-based Schools and Social Agencies*, (Princeton NJ: Princeton University Press, 2000).

organizations must remove any religious reference from their facilities in order to receive public funding.^{422 423}

Massachusetts has gone further than the federal government in establishing the separation of church and state. The Massachusetts constitution includes an article (Article XVIII, § 2) that explicitly prohibits the spending of public money on schools that are not subject to the commonwealth. This article was first passed as a “Blaine amendment” in the 1850s.⁴²⁴ The main supporters of the amendment came from the anti-Catholic “Know nothing” party. The original article prohibited state money from being spent on sectarian education – a measure intended to prevent state support of Catholic schools.⁴²⁵ In 1917, the article was revised to include a prohibition of state funding for all non-public schooling. This article has been often challenged in the legislature and the courts in the last few decades, but it has successfully withstood the onslaught to this point. Government support of students in private schools is unconstitutional in Massachusetts and will continue to be so in the foreseeable future.

⁴²² The prohibition on public aid to religious schools, however, was never absolute. In fact, the ruling in *Everson V. Board of Education* was that the state of New Jersey is permitted to finance bussing of Catholic school students.

⁴²³ There have also been federal laws that supported privatization. The best example is probably Title XX of the Social Security Act that encouraged contracting out of human services to nonprofit agencies (See Steven Rathgeb Smith and Michael Lipsky, *Nonprofits for Hire: The Welfare State in the Age of Contracting*, [Cambridge MA: Harvard University Press, 1993], 53-57.) This federal law, and its associated block funds for the states, created considerable growth in the nonprofit sector. Be that as it may, I am reluctant to view the legislation itself as an independent variable given the clear intent of the legislators to expand private provision by passing the law.

⁴²⁴ Blaine amendments are provisions that restrict the use of public funding in sectarian schools. The provisions are named after James G. Blaine, the United States Speaker of the House in the 1870s who attempted to introduce such an amendment into the United States Constitution in 1875 (from “Blaine Amendments,” <http://www.blaineamendments.org/Intro/whatis.html>.)

⁴²⁵ See section on Massachusetts education in chapter 2.

Texas represents an intermediate case between England and Massachusetts. Texas incorporated a Blaine amendment into its constitution in 1891. The amendment, however, is less restrictive than that of Massachusetts. While the Massachusetts amendment prohibits the use of public monies, in general, for the support of private education, the Texas constitution only restricts the use of the “permanent school fund” for this purpose.⁴²⁶ This more limited Blaine amendment still seems to allow the Texas Legislature to appropriate funds from other sources for the support of private schooling, sectarian schools withstanding. If a voucher bill were to pass the Texas legislature, however, there is little doubt that the constitutionality of public support for sectarian schools would be challenged by opponents in the state’s Supreme Court.⁴²⁷

⁴²⁶ Texas Constitution, Article VII § 5(a).

⁴²⁷ Daly interview.

Table 3-1: Summary of privatization-related legislation

Government	Law	Type of restriction-promotion	Independent or Intermediate Variable
England	None		
US – federal	Constitutional First Amendment	Restricts establishment of religion. In 1947, interpreted as prohibiting direct funding of sectarian schools. Less stringent about funding of other sectarian services.	Independent
	Title XX of the Social Security Act (1967)	Allows the use of federal funding for contracting out with private organizations.	Intermediate
Massachusetts	Constitution, Article XVIII	Prohibits use of state money for aid to private schools.	Independent
	Pacheco law (1993)	Demands 10% cost saving and guaranteed worker benefits as prerequisites for large privatization projects.	Intermediate
Texas	Constitution, Article VII	No use of permanent school fund for support of private schools.	Independent

The picture that emerges from the three case studies and a consideration of federal law in the United States is of a stark legal difference between the American states and England (see Table 1). This difference is especially pronounced in the case of education. In both Texas and Massachusetts, there are explicit constitutional restrictions on the use of public monies for the support of private schools. In England no such restrictions exist. Indeed, in recent years both Conservative and Labour governments have made an effort to include certain private sectarian schools that had not recently received public support in public

funding arrangements. The Sponsored Grant Maintained Schools which were established by the Conservative government in 1993, for example, were devised as a way of allowing private sectarian schools that were out of the religious mainstream to receive public funding.⁴²⁸ If these legal differences are indeed an overriding factor in determining the extent of privatization, we should expect to find no privatization in Massachusetts education, some privatization in England with Texas being an intermediate case.

Yet precisely the opposite is true. If the extent of privatization in education is measured as the share of publicly-funded students in private schools, it is England which is considerably behind Texas and Massachusetts in its privatization rate.⁴²⁹ How is it that despite the legal restrictions there is still privatization of education in the American states? My study draws attention to two general reasons for the ineffectiveness of legal restrictions on privatization. First, some laws are open to interpretation and the interpretation adopted could allow for some forms of privatization. In legal theory this is known as *indeterminacy*.⁴³⁰ As I mentioned in the case of the Texas Constitution's Article VII § 5, an expansive interpretation of the article would prohibit any type of public support for private schools while an interpretation that adheres to the dry letter of

⁴²⁸ Walford (2000).

⁴²⁹ In 2003-2004, the percentage of publicly funded privately educated school children in England was 0.46%, in Massachusetts it was 1.5% and in Texas the figure was 1.7% (Hansard, "Written Answers," from 11 June 2003 and 8 September 2003; Department for Skills and Education, "Education Statistics," for 1998 to 2003; Massachusetts Department of Education, "Charter School History," 29 April, 2004; Charter School Resource Center of Texas, Texas State-Approved Charter School Statistics, http://www.charterstexas.org/resources/tcs_stats.php, accessed May 5, 2004.)

⁴³⁰ For a discussion of indeterminacy see Andrew Altman, "Legal Realism, Critical Legal Studies, and Dworkin," *Philosophy and Public Affairs*, vol. 15, 3 (Summer, 1986), 205-235. Altman argues that indeterminacy arises for two major reasons. First, laws are often couched in general and abstract language that fails to dictate any specific outcomes when applied to real world cases. Therefore, the interpretation of the law in relation to a specific case is left to the judge who, in effect, becomes a lawmaker. Second, and more importantly according to Altman, there are numerous laws that apply to each and every case. A judge's decision regarding what rules apply to a specific case are indeterminate and lead to very different outcomes.

the law would still allow support as long as the money is not allocated from one specific funding stream. A more famous, and perhaps more important example, is the proper interpretation of the first amendment. In 2002, the Rehnquist Supreme Court, in *Zelman V. Simmons-Harris*, ruled by a 5 to 4 majority that the Ohio voucher program, which includes sectarian schools, does not violate the first amendment.⁴³¹ Chief Justice William Rehnquist, in delivering the majority decision, argued that because it is the children's parents that choose the school and not the state, the state is not imposing sectarian education on any individual, therefore, the "Ohio program is entirely neutral with respect to religion."⁴³² This ruling opens the door, at least legally, for voucher programs to be established across the country. Nevertheless, no new major voucher program has been established in the two years since the court ruling.

Second, even laws that are relatively straightforward provide numerous loopholes for privatization. While strict laws against public support of private education definitely restrict the use of public monies to support instructional services in private schools, they are often understood as permitting the state to provide private schools with ancillary services such as special educational programs, transportation, nursing services, and tech services.⁴³³ The value of this support accounts for about 13.5% of a Catholic schools' budget in Massachusetts.⁴³⁴ Henry Levin estimates the figure to be even higher for American private schools in general – over 25%.⁴³⁵ The various exemptions made from

⁴³¹ U.S. Supreme Court, *Zelman V. Simmons-Harris*, 536 U.S. 639 (2002).

⁴³² *Zelman V. Simmons-Harris*.

⁴³³ Perla interview

⁴³⁴ Perla interview.

⁴³⁵ Henry M. Levin, "The Public-Private Nexus in Education," *American Behavioral Scientist*, Vol. 43, 1 (September 1999): 128.

the general “no aid” rule can and often are expanded. The Catholic Conference in Massachusetts, for instance, has found a policy of lobbying the executive and legislature for more publicly-funded services more practical than direct assaults on the constitutional amendment. The definition of different categories of support, already expanded several times by the state, can be broadened to include new services.⁴³⁶

Privatization in education bypasses the constitutional amendments in another way: the creation of charter schools. Charter schools are allegedly public schools that receive a considerable degree of administrative and academic autonomy from the education establishment. The categorization of charter schools as “public”, however, is questionable. In states such as Texas and Massachusetts, the vast majority of charter schools are established by private groups, for-profits are permitted to manage and actually do run a number of charter schools, and the schools are not subordinate in any way to the local school districts. It seems that the distinction between charter and private schools is a very fine one indeed.⁴³⁷ The charter school movement, at least in states with “strong” charter laws, is a form of privatization in education that successfully bypasses any Blaine amendments prohibiting public support of private schools. Existing private schools could transform into “public” charter schools, and a number have chosen this path in order to become eligible for public funding. If the legal barriers were the only obstacles in the way of privatization, the charter school movement would have by now

⁴³⁶ Perla interview.

⁴³⁷ The main difference is that students in charter schools are subject to standardized testing and the schools are held accountable for the results of this testing. Yet even this difference is more apparent than real; students in private schools that receive public funding through voucher programs are usually also subject to standardized testing. In Milwaukee, the largest voucher program in the country, 92% of voucher schools administer a standardized test (Public Policy Forum, “Research Brief,” Vol. 92, 1, 16 February, 2004.)

privatized a significant share of the Texas and Massachusetts education systems. There are, however, other factors that are far more influential that restrict the growth in the number of charter schools and privatization.

Legal factors have influenced privatization as primary determinants to a much lesser degree than often argued. Legal restrictions on privatization of education in the United States have been successfully reinterpreted and bypassed in ways that allow the expansion of privatization.

Centralized vs. fragmented political systems

The American and British polities represent two very different types of political systems. The American system is based on a horizontal separation of power – executive, legislature and judiciary – that is intended to create checks and balances and also a vertical division of government into federal, state and local authority. The British system, in contrast, is exceptionally concentrated. The government is formed by the majority party in the parliament and the lack of a written constitution implies that the government/parliament's law making power goes virtually unchallenged by the courts. The bicameral separation of parliament into a House of Lords and a House of Commons does not create a real separation of power because the House of Lords has no real independent legislative power and cannot defeat House of Commons legislation (although the Lords are able to postpone the passing of legislation). The recent devolution in the United Kingdom has transferred some powers to the newly established Scottish and Welsh legislatures. Devolution has no effect, however, on policy making in England,

which is still done at Westminster. Local government in England does exist and, in principle, has broad authority over a wide range of services. Yet, in practice, few significant decisions regarding privatization are made at the local level. Despite public statements to the contrary, the Labour government has refrained from delegating more power to local authorities.⁴³⁸ In fact, Labour went even further than the previous conservative government in centralizing decisions on education. As one commentator argues:

“Labour's first term was dominated by accusations of ‘control freakery’ as it imposed education reforms from Whitehall and set targets for classroom achievement. Local authorities were reduced to the status of messengers, reporting back on the progress of schools in meeting central government demands.”⁴³⁹

Political scientists have discussed the policy implications of institutional differences in length. In recent years, this field of study has been dominated by the concept of veto points.⁴⁴⁰ George Tsebelis asked how variations in power structure affect the power to produce policy change.⁴⁴¹ His answer is predicated on the concept of “veto players”, which he defines as “individual or collective actors whose agreement (by majority rule for collective actors) is required for a change in the status quo.”⁴⁴² Tsebelis argues that the more veto players, the smaller the potential for policy change.⁴⁴³ The rationale

⁴³⁸ Perhaps because of misgivings regarding the professionalism of local authority elected officials and personnel (Interview with Martin Rogers, The Education Network/ Local Government Information Unit, 11 February 2003.)

⁴³⁹ Tony Halpin, “Control Freaks go to the Back of the Class,” *The Times*, 25 June, 2004.

⁴⁴⁰ George Tsebelis argues that analysis of veto points supersedes study of until-then common dichotomies in comparative political systems such as parliamentary/presidential or two-party/multi-party systems. Tsebelis (1995).

⁴⁴¹ Tsebelis (1995).

⁴⁴² Tsebelis (1995): 289.

⁴⁴³ Tsebelis also argues that decreasing congruence between different veto players or greater cohesion among the constituent units of a single veto player (in both cases, with respect to policy positions) also decreases the chances of policy change.

underpinning this conclusion is that the more actors who are required to agree to a change in the status quo, the greater the chances that there will be one actor who would reject policy change, thus perpetuating the status quo.

Tsebelis characterizes the Westminster political system as a single veto point system. The American political system, in contrast, has three institutional veto points for decisions made at the federal level. Of course, if one examines decision-making at a lower level of government, as is true of this study, or includes informal veto players in the count (e.g., Committee chairs in Congress who have the ability to kill legislation at the committee stage), the number of veto points in the American system is even larger. This implies, according to the “veto point” argument, that policy reform in the United States would be considerably more difficult than in England.

Studies of welfare state retrenchment from the 1990s and onward support this prediction.

Evelyn Huber and John Stephens write:

“Only in Great Britain and New Zealand could one speak of an actual system shift from welfare state regimes that used to provide basic income security to welfare state regimes that are essentially residualist, relying heavily on means testing. We argue that the exceptional nature of these two cases can be traced to their political systems which concentrate power (unicameral or very weakly bicameral parliamentary governments in unitary political systems) and make it possible to rule without a majority of popular support (single member districts and plurality elections which allow parties with a minority of votes to enjoy large parliamentary majorities). Thus in both cases, the conservative governments were able to pass legislation which was deeply unpopular.”⁴⁴⁴

⁴⁴⁴ Evelyn Huber and John D. Stephens, “Welfare State and Production Regimes in the Era of Retrenchment,” in Paul Pierson (ed.), *The New Politics of the Welfare State*, (Oxford: Oxford University Press, 2001), 126.

There exists a negative relationship between the number of veto points and the potential for welfare state reform, especially radical reform. Privatization of delivery is a political flashpoint and, as such, there is little question that it qualifies as radical reform.

Therefore, one should expect that privatization of delivery in the United States, a political system with numerous veto points, should be less extensive, all else being equal, than it is in England, a political system with only one veto point.

By now the reader has probably guessed that this is not the pattern of privatization witnessed in the case studies. In none of the three policy domains is privatization in England more extensive than in both American states. As was mentioned in the discussion of political culture, this finding in itself is insufficient grounds for completely rejecting the proposed theory because of the small number of case studies examined. However, a closer look at the case studies provides a strong reason to re-evaluate the “veto point” theory when applied to privatization of delivery.

The literature that deals with the significance of veto points has ignored an important facet of veto points: actors in these critical intersections of the policy process are often able not just to block policy but also to initiate new policy. To this point, the crucial aspect that has gone overlooked is that veto points could also be *entry points* into the policy process. Viewing the policy process from this new perspective requires us to reevaluate the common wisdom that the more fragmented a system is, the more veto points there are, and therefore the smaller the prospects for policy reform. It is possible that this effect is offset by the abundance of entry points into the policy system.

How does this balance play out in the case studies? The American case studies indicate that there are three general types of entry points that facilitate privatization of delivery: state executive or legislature, the judiciary, and other levels of government (federal or local). I will discuss each in turn.

State executive or legislators

In contrast to the Westminster system, in the American political system, policy reform can be initiated by legislators (in either House) or the executive. Privatization is no longer a new intriguing policy that few politicians are familiar with. Hence, it is clear that the importance in numerous entry points is not in the fact that there are more ways of presenting a new idea into the political process. The fact that the policy could be initiated by more than one actor, however, is significant even if the policy proposed is anything but new.⁴⁴⁵ Once a policy actor places a proposal for policy reform on the agenda, it forces other actors to respond; actors who, otherwise, might have preferred the proposal not to come up at all. A distinct possibility is that actors who do not favor the proposal would do their best to defeat it, and if they control a veto point, they would do so successfully.

Yet other actors might go along with a policy they do not particularly favor for two related reasons. First, vetoing the proposal could create problems for the actors with

⁴⁴⁵ One explanation for differences in the extent of privatization across cases is that in some places policy entrepreneurs have introduced the concept and blueprints for privatization while in others cases policymakers are yet unfamiliar with the concept. I argue in the theoretical chapter that by now policymakers, virtually in all domains, are well acquainted with the concept of privatization.

supporters within their constituency. The cost of alienating segments of their constituency could be perceived as too high by some politicians. In Texas, for example, Governor Rick Perry opposed the passing of a bill (House Bill 6, 2001) that checked the growth of the charter school movement. Perry could have vetoed the bill (and in Texas overriding the governor's veto is practically impossible) but chose not to do so. Both interviewees who supported and opposed the bill thought the governor's main reason for refraining was that he did not want to be publicly viewed as a supporter of the bad charters schools that were intensively covered in the media at the time.⁴⁴⁶ The governor was not willing to sacrifice some of his popularity to defeat the bill. Second, some political actors will not use their veto power to defeat an unfavorable policy due to their desire to reach a satisfactory compromise that would allow them to achieve other objectives. This appears to have been the case with the Massachusetts House Speaker, Charles Flaherty's acquiescence with respect to the legislation that established charter schools. Flaherty was opposed to charter schools but afraid to lose on other parts of the Education Reform Act so he grudgingly accepted charters.⁴⁴⁷ In a political system with what is in effect only one real point of entry it is easier to keep certain policy proposals off of the agenda than in a system in which policy could be proposed by different actors. Although it is undoubtedly true that in the latter type of political system it is easier to block a policy once it is placed on the agenda, there are situations in which actors would elect not to take advantage of their veto power even if they oppose the proposed policy/legislation. The increase in the number of entry points increases the odds that a proposal would be placed on the public (therefore visible) political agenda. Once a proposal is on the agenda, the veto cost for a

⁴⁴⁶ Patterson and Schlomach interview; Dunnam interview.

⁴⁴⁷ Roosevelt interview; Sentence interview.

politician(s) rises because public use of the veto could alienate supporters or lead to her favored proposals being vetoed by other veto players. Hence, the increase in entry points decreases the probability of exercise of veto power, thus to a degree offsetting the negative effect of multiple veto points on policy reform.⁴⁴⁸

The courts

In the fragmented American political system, the judiciary has the ability to create windows of opportunity for policymakers by undermining the existing status quo. Although it is true that the judiciary does not have the authority to initiate new policy or legislation, it does have the power to rule existing policy/legislation constitutionally unacceptable. Once the judiciary forces a change in the status quo, policymakers can promote their preferred policies – policies that might not have been seriously considered before. In several of my American case studies, the courts have indeed played such a role in the privatization process (see Table 2). In prison privatization in Texas, for example, the *Ruiz* case regarding prison overcrowding concluded with a consent decree that required the construction of new prisons in Texas. In January 1987, the governor promised the federal judge in charge of the case that Texas will comply with the decree immediately by building new prisons (prior to the meeting the judge threatened to slap Texas with a \$850,000 a day fines until the State takes the necessary actions to comply with the decree). The construction of private prisons was viewed as a way of quickly increasing prison capacity and the court decision created a sense of urgency. Thus, the

⁴⁴⁸ The argument I make in this section is not that veto points have no effect at all over the privatization policy process – they do. What I do argue is that the number of veto points is not a good predictor of the extent of privatization because of the strong offsetting effect of entry points.

court's decision stimulated the privatization action on behalf of the executive and the legislature.⁴⁴⁹

In Massachusetts, the courts played a significant role in demanding a change in the status quo that ultimately led to privatization in mental health and education. The Education Reform Act in Massachusetts, that among other things included authorization for charter schools, was set in motion by the *McDuffy* case that ruled the state was violating the rights of some of its students by not guaranteeing them adequate educational opportunities.⁴⁵⁰ The *Brewster* case accelerated de-institutionalization in Massachusetts mental health care and, with it privatization of delivery, due to the fact that most community providers were nonprofits. *Brewster* required the state to place patients in the least restrictive settings and this was understood to imply de-institutionalization.⁴⁵¹ The *Raj* ruling in Texas – another mid-1970s ruling – also forced the state to radically restructure the delivery of services in order to move patients to community settings.⁴⁵² *Raj*, however, in contrast to *Brewster* in Massachusetts, did not herald privatization of delivery. The community care system, established to absorb the patients leaving the asylums, was predominantly public. The different outcomes, privatization-wise, of the similar court cases in the two states focuses attention on an important point. Court rulings that require a radical change in the existing status quo create a window of opportunity for privatization, but they do not mandate it. Thus, the *Raj* ruling in Texas created a window

⁴⁴⁹ Etheridge (1998), 36-41; Cummins (2000), 34-35.

⁴⁵⁰ Eye on Education, "Education Reform Act of 1993," http://www.eyeoneducation.tv/reform/ed_reform_act.html, accessed on 21 July, 2004.

⁴⁵¹ Hogarty (1996).

⁴⁵² The Handbook of Texas Online, "Mental Health." <http://www.tsha.utexas.edu/handbook/online/articles/view/MM/smmun.html>.

of opportunity for privatization of mental health delivery that was not taken advantage of in contrast to the *Brewster* case in Massachusetts.

Table 3-2: Court cases that stimulated institutional restructuring

	Mental Health	Education	Incarceration
Massachusetts	<i>Brewster v. Dukakis</i> : Required the state to provide patients with the “least restrictive settings” which was understood to mean a community setting. The move from asylum to community was also a move from public to private delivery.	<i>McDuffy v. Secretary of the Executive Office of Education</i> : The ruling required the state to correct “education inadequacies”, creating the initial stimulus for the Education Reform Act that included the establishment of charters.	No relevant case
Texas	<i>Raj v. Jones</i> : Forced the state to improve and extend its community mental health system. Did not lead to immediate privatization.	No relevant case	<i>Ruiz v. Estelle</i> : A ruling that prison overcrowding violates the Eighth Amendment (“Cruel and unusual punishment”). This ruling forced Texas to expand prisons’ capacity rapidly, which led to privatization.

Federal and local government

The fragmentation of the American political system into three levels of government – federal, state, and local – creates two additional points of entry into the policy process

that do not exist in a pure unitary political system. Of course, the three levels of government are neither wholly distinct independent entities nor equals in their authority. Nevertheless, the federal and local governments often do have sufficient authority to promote privatization of delivery, independent of the state governments.⁴⁵³

The case of Texas incarceration privatization illustrates this best. Even before the state legislature authorized the construction of private prisons (in 1987), there were privately run federal incarceration facilities in Texas. In the mid-1980s, the Immigration and Naturalization Service contracted out to private firms the construction and management of detention centers for illegal immigrants in Laredo and Houston.⁴⁵⁴ In the 1990s, the federal government contracted with Texas counties for the detention of federal inmates and these counties often subcontracted with private firms for the incarceration services.⁴⁵⁵ During the 1990s, Texas counties became a major player in privatization. The counties pursuing a new strategy of economic development took advantage of the huge increase in prison rolls and contracted out excess jail space to the state and federal governments. In most cases, the counties did not run the jails on their own but contracted out operation to private firms. Furthermore, the incarceration business turned out to be so lucrative that several counties allowed private companies to build and manage new jails under their jurisdiction. These facilities were labeled “spec jails” (‘spec’ is short for speculation) and, in this way, the private sector expanded its capacity by about 10,000 beds. The counties

⁴⁵³ In the three policy domains explored, the state government is the most important authority in devising policy, privatization withstanding.

⁴⁵⁴ ABt. Associates Inc., “Private Prisons in the United States: An Assessment of Current Practice,” 16 July, 1998; “About CCA”; Austin and Coventry (2001).

⁴⁵⁵ Cummins (2000), 78-132.

did not require state authorization for pursuing this form of privatization although the State Legislature could have acted to block this development if it had so wished.⁴⁵⁶

The federal government also played a role in encouraging privatization of delivery in education and mental health. In the case of mental health care, the rules applying to Medicaid support for mental health are such that states receive federal support for patients in private facilities but not for those in state institutions. These rules were explicitly mentioned as a reason to opt for privatization by the Massachusetts Governor's Commission dedicated to the review of health facilities.⁴⁵⁷ Through privatization, the Commission argued, the state could leverage additional federal support for the mentally ill. In education, the federal government recently passed the No Child Left Behind bill in 2002 that both opponents and supporters of privatization expect to encourage privatization in education.⁴⁵⁸

In the United States, education is often characterized as the business of local government. Nonetheless, privatization in education has been primarily driven by the state governments. There are, however, notable exceptions. In Texas, school districts have sometimes pursued a privatization policy independent of the state. The Dallas Independent School District, for example, contracted out the management of seven

⁴⁵⁶ It is easier, however, to preserve the legal status quo than to change it. Therefore, opponents of privatization would have been at a disadvantage if they would have moved to shut down the private county jails.

⁴⁵⁷ "Actions for Quality Care," 1991.

⁴⁵⁸ Parents of children in failing schools are permitted to transfer their children to better public schools in the district according to No Child Left Behind requirements. Many school districts, however, do not have adequate space to comply with this requirement. Hence, the No Child Left Behind Act recognizes several acceptable alternatives to transfer: reconstitution as a charter school, private management of private schools and school voucher programs (Lisa Snell, "The No Child Left Behind Act and the Charter School Movement," March 2003, from: <http://www.rppi.org/nochildhtml>, accessed 20 July, 2004.)

schools to Edison, the for-profit Education Management Organization, in 2000/2001 (the contract was terminated by the district two years later).⁴⁵⁹ The Houston Independent School District has been especially active in the field of privatization: the district contracts with several private schools for the provision of special education to students;⁴⁶⁰ the number of district authorized charter schools in Houston is greater than in all the rest of Texas combined;⁴⁶¹ and the district has contracted out many of its non-instructional services to private companies.⁴⁶² Under the leadership of former school superintendent Rod Paige (now the Secretary of State for Education), Houston has ventured on its own to expand the sphere of private delivery in its educational system.

The three types of entry points discussed above differ significantly. The judicial entry point is the least direct. It creates one advantageous condition for privatization by requiring change in the existing institutional structures, but the privatization initiative must come from elsewhere. The executive/legislators' entry points operate on the level of state government – the level of government with the greatest influence on privatization. Privatization initiatives starting from these entry points are dependent for their success on the acquiescence of other actors who are veto players in the system. Nevertheless, the fact that privatization proposals could be placed on the agenda by a variety of different actors increases the prospects for privatization. The third type of entry point pertains to different levels of government. Privatization initiated by levels of government, other than the

⁴⁵⁹ Moses interview.

⁴⁶⁰ Salatheia Bryant, "Reactions mixed to HISD private-school plan," *Houston Chronicle*, 24 July, 1996.

⁴⁶¹ 27 out of 35 school district authorized charter schools are located in the Houston Independent School District (interview with Patsy O'Neill, Executive Director of Charter School of Texas Resource Center, 5 January, 2004).

⁴⁶² Melanie Markley, "No Free Lunch," *Houston Chronicle*, 25 May 1997.

State, could occur without state approval and even in the face of state objections. The state government does not necessarily have veto power over privatization initiatives emanating from other levels of government (e.g., federal penitentiaries in Texas). In other cases in which it does have authority, passing the legislation that would prohibit privatization by other entities could prove to be quite difficult.

Conclusion

In this study, differences between political systems did not account for privatization patterns. Three dimensions on which political systems vary failed to offer real analytical leverage in explaining the extent of privatization. Political culture/ideology varies considerably among my three case studies, but it is difficult to generate clear hypotheses about privatization based on existing theories of political culture. Furthermore, privatization patterns do not conform to some of the more straightforward expectations predicated on the differences in political culture. A central reason for the absence of an observable link and privatization patterns is the ideologically ambiguous nature of privatization of delivery; it cannot be associated with only one side of the left-right ideological continuum. Differences in legal frameworks among political systems are also less significant than they might appear at first. In some cases, legal factors should not be treated as proper independent variables. Yet even in cases in which legal factors are legitimate independent variables, they are not factors that determine the extent of privatization. Legal barriers to privatization of delivery that are often viewed as imposing rigid limits on its extent are more flexible than often thought. Legal barriers can be reinterpreted to permit certain forms of privatization and there are also ways of

conceptually repackaging privatization that allow for circumvention of the law. Veto points are no doubt important factors in the political process. Be that as it may, fragmented systems are not necessarily less accommodating to privatization than centralized political systems because more veto points also means more entry points into the policy process and more opportunities to promote privatization and change the status quo.

The comparison across political systems is obviously limited by the fact that the political systems studied in this research are not all that far apart on some dimensions. One might argue that if one of the case studies was, for example, Sweden, a social democratic welfare state, then the difference in political ideology would become a central explanatory variable. This possibility does not negate the significance of the comparison construed in this study. First, the comparison still appears to be applicable to the liberal welfare states, an important subset of developed countries that appears to be expanding in recent years. Second, this study does offer reason for pause when considering the effect of political system-related factors in all developed countries. Drawing on the case studies presented here one might question if a strong socialist political ideology necessarily precludes privatization of delivery. At least in the liberal welfare states, there are left-of-center political and academic figures that do not see a necessary contradiction between privatization of delivery and achieving egalitarian goals. Ultimately, privatization research would benefit from extending this study to other countries and other political systems. The conclusions of this comparison could provide a good basis for structuring the research agenda for a broader study of privatization across political systems.

Chapter 4: Policy Domains

As discussed in the previous chapter, privatization of delivery is not determined by political system-related variables. It is true that I did not examine all possible variables of this type, something that is quite impossible to do in any case, but the evaluation of three central variables demonstrated little connection between political system attributes and the extent of privatization.

This chapter sets out to analyze the case studies from a different perspective; instead of comparing political systems, it compares the three policy domains: education, mental health care and incarceration. Recent studies in the public policy and welfare state literatures suggest that much of the differences in policy evolution can be explained with reference to the divergent political dynamics of policy domains.⁴⁶³ This study supports a similar conclusion: much of the variation in the extent of privatization of delivery is attributable to policy domain- related features.

There are different measures for privatization rates. Table 1 compares privatization rates using two of the most important measures: the share of the public budget that is used for the purchase of private services and the share of publicly funded service recipients who are served primarily by private providers.⁴⁶⁴

⁴⁶³ See Hank C. Jenkins-Smith and Paul A. Sabatier, "Evaluating the Advocacy Coalition Framework," *Journal of Public Policy*, Vol. 14 ,4, (1994): 175-203; Pierson, (1996); and discussion in theory chapter.

⁴⁶⁴ In some cases, service recipients receive services from both public and private sector providers. In England, for example, almost all publicly maintained students are taught by teachers from the public sector, yet many of the ancillary services in schools are privately provided. In this case, the students are treated as

Table 4.1: Privatization indicators for 2003/4

(Percentage of publicly funded recipients served privately
and percentage of public budget allocated to private entities)

		Massachusetts	Texas	England
Mental health	Recipients	90% ⁴⁶⁵	12% ⁴⁶⁶	61.4%
	Budget	58%	NA	20%
Incarceration	Recipients	0%	10.4%	9.5%
	Budget	NA	NA	NA
Education	Recipients	1.5%	1.7%	0.5%
	Budget	1.0%	NA	10%

Sources: Massachusetts' mental health care: Seavey (1999); Trilling interview.

Massachusetts' incarceration: Interview with Timothy App, former Assistant Deputy Commissioner in the Massachusetts Department of Correction, 18 February, 2004.

Massachusetts' education: Massachusetts Department of Education, "School Finance: Charter Schools," (FY 1998, 2001); U.S. Census Bureau, Statistical Abstracts of the United States, "Public Elementary and Secondary Education Estimated Finances," (1999, 2002); "Charter School History," 2004.

Texas' mental health care: Interview with anonymous source affiliated to the Texas Department of Mental Health and Mental Retardation.

Texas' education: Charter School Resource Center of Texas website; Texas Education Agency, FAQs;

Texas' incarceration: "Bureau of Justice Statistics Bulletin: Prisoners in 2002."

England Mental Health: Hansard, Written Answers, 2 December, 1993, Column 693; House of Commons, Select Committee on Health Memoranda, Table 3.5.1 (h), 17 September, 2003; Independent Healthcare Association, "Key Global Figures," http://www.ihc.org.uk/main_file.php/sector/151/. Accessed 3 June 2004; Laing & Buisson, *Laing's Healthcare Market Review 2001-2002; Building Better Partnerships* (2001): table 3.9; various interviews.

England education: Hansard, "Written Answers," from 21 October 1991, 11 June 2003 and 8 September 2003; "Education Statistics," for 1998 to 2003; *Building Better Partnership* (2001), Table 3.7.

England incarceration: The Home Office, "Prison Population Brief: England and Wales, October 2003; Geoff Leybourne, Letter from May 6, 2003.

The table above is incomplete, especially with respect to budget share figures, and in a couple of cases (mental health care recipients in Texas and budget share in mental health care in England) the figures are no more than rough estimates. Furthermore, the table

public sector recipients because the core service provider belongs to the public sector. The information on budget shares, however, better reflects the delivery mix.

⁴⁶⁵ This figure is a rough estimate based on a calculation of the number of publicly served patients (less than 2,000) as a percentage of the total mental health population (24,000).

⁴⁶⁶ There is no official figure for publicly funded privately provided mental health patients in Texas. The figure presented here is a minimum estimate presented by an anonymous source within the Texas Department of Mental Health and Mental Retardation.

shows current private delivery rates and not privatization rates as such. This reflects data availability problems for earlier years, especially for mental health care delivery. Be that as it may, in all nine policy domains, the share of publicly funded private delivery, as late as the mid-1970s, was very close to zero. Hence, full public delivery is the common benchmark.

One can discern a clear pattern that emerges from these figures. Privatization rates in mental health care are significantly higher than in the two other domains, privatization rates in education are significantly lower, and incarceration privatization falls in between although the Massachusetts case stands out with no privatization at all.

What is more striking than the privatization figures, however, are the similarities in the privatization trajectories of programs that belong to the same policy domain, regardless of political system. Privatization in mental health care has met with little opposition in all three political systems. Often, the very fact that privatization was taking place was not recognized, or at least acknowledged, by some of the main actors. Privatization in education, in contrast, is a slow process that has suffered setbacks in all three political systems. It is always in the limelight despite attempts by proponents to present it as something other than privatization. Finally, privatization in incarceration usually takes the form of a response to overcrowding in the public prison system. This is even true of the Massachusetts case study in which proposals for the establishment of private prisons were introduced to address the overcrowding problem but were ultimately rejected. Thus,

privatization in prisons takes the form of privatization by addition and not privatization by substitution (of existing public facilities).

This chapter focuses on these differences in privatization trends across the three policy domains. In what follows, I present two central explanations, related to domain-specific attributes, for the variations among the case studies. First, I argue that the size of a policy domain, an attribute that largely determines the number and political efficacy of its stakeholders, is responsible for much of the variation. All other things being equal, it is much more difficult to privatize a large policy domain than a small one because there are many more stakeholders in a large domain. As part of the discussion of domain size, I examine how domain size affects the use of cost containment for privatization and how cost-containment- related privatization is influenced by the contraction and expansion of a domain's budget. I find that while privatization is often associated with cost containment in small domains, this is not the case in large domains. Furthermore, privatization often – though not always – occurs during a budget contraction in small domains because it is then that the appeal of privatization as a cost containment measure is at its highest. In contrast, in large domains, privatization does not coincide with budget contractions. The discussion of the effects of domain size continues with an examination of three strategies that facilitate privatization in large domains and two factors that facilitate privatization in both large and small domains.

Before shifting focus to the second general explanation of privatization, I consider two alternative explanations for the pattern: one is predicated on the claim that education is a

unique domain, while the other explains privatization in terms of its prospects to improve delivery in a given domain. Both explanations have some power, but cannot account for the privatization pattern. The second explanation I present for privatization patterns centers on institutional change and restructuring as an important determinant of privatization. This explanation helps understand why privatization in mental health has exceeded not just privatization in education but also privatization in prisons (another small domain).

The two explanations above have one important common feature: the extent of privatization depends primarily on the strength of the opposition. The main difference between cases in which privatization made significant headway and cases in which it faltered is the perceived power of the opposition. Why the power of the opposition figures so heavily in the privatization process, will be discussed extensively in the following section.

Policy domain size

The first step in evaluating the importance of domain size for privatization of delivery is finding reasonable measures for domain size for the different case studies. I use three measures: budget size, number of Full Time Employees, and number of service recipients. As table I-2 demonstrates, education (K-12) is by far the largest domain of the

three according to any one of the three measures.⁴⁶⁷ Education has a budget that dwarfs the other domains, the number of service recipients (students) is by an order of magnitude larger than in incarceration (inmates) or mental health (patients), and the size of the education workforce (only teachers are counted) surpasses by far the workforce in the two other domains.⁴⁶⁸ Mental health care and prisons are roughly in the same size range and their relative ranking varies with political system.

Does domain size matter to the dynamics of privatization of delivery? I argue that domain size is, indeed, an important determinant of privatization of delivery. Domain size can be related to a more general variable: political efficacy. In a democratic political system, a system in which representatives are directly elected by the voters, the views of stakeholders in large policy domains have considerable sway over politicians because they potentially constitute large blocks of voters.

There are, of course, other possible factors, aside from domain size, that contribute to political power. First, the degree to which stakeholders in a domain are organized should affect their political influence. One would expect organized stakeholders to have a greater

⁴⁶⁷ I present the indicators in table I-2 as a way of comparing domain size. These indicators, however, are not necessarily determinants of privatization. The most important domain-size aspect, insofar as privatization is concerned, is the number of stakeholders as will be discussed below.

⁴⁶⁸ A possible criticism of this comparison is that it mistakenly treats mental health care as a distinct policy domain. Critics might argue that mental health care should be treated as a sub-field in general healthcare in the same way as primary education is considered a sub-domain of general public schooling. There is, however, good reason to deal with mental health care as a domain in its own right. Mental health care has historically evolved as a distinct domain in contrast to proper sub-domains of general healthcare (e.g., gynecology). For years, the mentally ill were placed in specialized mental health asylums (not general hospitals) and recently many have been placed in specialized community settings. Mental health is also administratively separate from general healthcare in Texas and Massachusetts where a specialized state agency is responsible for the domain. In England, mental health is the responsibility of the Department of Health, but is traditionally considered a social service and local social service department are involved in the delivery of mental health services.

influence over policy than unorganized stakeholders who might go unnoticed in the political arena. The degree of organization, however, does not seem to be very different across the three policy domains. The field of education encompasses a dense network of producer, user and advocacy organizations, yet this is equally true of the mental health domain (and somewhat less of incarceration where the users of the services are not organized). There was one major example in the different case studies of a central group of stakeholders that failed to organize: private mental health providers in Texas. Yet despite this failure of the private sector to organize, the Texas legislature recently passed a bill that is set to radically privatize the delivery of mental health (more on that later).

Second, it is possible that domain size matters less than the general attitude of stakeholders in the domain to privatization. Thus, in a domain in which most stakeholders oppose privatization, privatization is less likely to occur than in a domain in which the majority supports privatization. I do believe that views among stakeholders in the domain have some weight with policymakers, and all other things being equal, the greater the internal support for privatization, the more likely privatization is going to be.

Nevertheless, domain size is far more important than the balance between supporters and opponents of privatization among stakeholders. In cases that will be discussed below – privatization of prisons in England during the early 1990s, the privatization of mental health services in the Massachusetts in the early 1990s and in the passing of recent privatization legislation pertinent to Texas mental health services – the majority of stakeholders opposed privatization but this had no impact on policymakers. In contrast, in education – a large policy domain – policymakers are very careful not to cross

stakeholders on the issue of privatization, even in cases in which there exists a vocal minority in favor of privatization. Because the concept of stakeholders is central to the domain size argument, yet still quite vague, I will discuss it in greater detail below.

Stakeholders

I argue that stakeholders in large service domains have greater political clout than their counterparts in smaller domains. But who should be considered a stakeholder? A narrow definition might include only individuals that receive an important service or work within the domain. A broad definition could include any person who is directly or indirectly affected by the service, practically encompassing all the residents of a given polity.⁴⁶⁹ In the theory chapter, I proposed a laundry list of types of stakeholders without elaborating on the reasons for including or excluding certain groups. For the purposes of this chapter, however, I believe it is necessary to go beyond a laundry list.

Thus, I define stakeholders as individuals or organizations that have a significant interest in a policy domain and are involved in promoting policy positions related to the domain. This definition incorporates two necessary conditions for being a stakeholder. First, a stakeholder, whether person or organization, must have a significant interest in the domain. The interest does not have to be a personal interest, but it should pass a certain threshold of intensity. Persons and organizations that pass this threshold would typically have some knowledge of the main policy debates in the field, hold views concerning these debates, and be willing to act on their views. This condition very well might exclude many service users. Thus, school students, although the primary users of education services, in many cases are not stakeholders. This is because students tend not to have views on policy and even in cases in which they have views, rarely do they promote them. Their parents, however, are very likely to be stakeholders because of their intense interest in their children's education. This appears to be counterintuitive; how could it be that the primary users of a service are not always stakeholders? In my study, however, I am interested in stakeholders only from a purely political perspective – what is their impact on policy – thus I allow for the exclusion of individuals that do not have views regarding policy.

Second, to be a stakeholder, a person or an organization, should demonstrate willingness to act on his views in the public sphere. This involvement could be limited or extensive. For example, both a person who persistently advocates for a policy and a person whose vote is partially informed by her view on a domain-related issue are stakeholders although their degree of involvement is clearly very different. What both people share in this case is a certain degree of participation that is of significance to policymakers.

⁴⁶⁹ It is always possible to construe a causal chain that would connect a service to a specific person.

This definition of stakeholders is framed to capture the political perspective, specifically the policymakers' perspective of stakeholders. Policymakers, politicians especially, are concerned about individuals and organizations that show a strong interest, voice that interest, and are prepared to act upon it in the ballot box or elsewhere. Mancur Olsen stresses the importance of intense interests in the political process in his theory of collective action. This analysis differs from that of Olsen, however, in recognizing that not only intensity matters but also size.⁴⁷⁰ Stakeholders, by definition, have a significant interest in policy regardless of domain. All stakeholders pass that threshold. The difference between domains, therefore, is not whether interest is concentrated or diffuse but in the relative political weight of these interests. The relative weight largely depends on numbers. Nevertheless, what ultimately matters is not the actual number of stakeholders in the domain but policymakers' rough estimate of that number. It is possible that policymakers over-estimate or under-estimate the number of stakeholders in a domain. It could be that there are far less stakeholders in education, for example, than policymakers make out. It is plausible that actual numbers and policymakers perceptions regarding the number of stakeholders correlate strongly, but when they do not it is the policymakers' perception of the numbers that really matters.

As demonstrated by the three indicators in table I-2, education is by far the largest domain of the three considered in this study. While it is possible that the relative size of a domain does not reflect the relative number of its stakeholders, in the cases examined here the relative number of stakeholders does correspond to domain size. Education-related organizations in England and Texas have millions of members (hundreds of thousands in Massachusetts),⁴⁷¹ far more than in the

⁴⁷⁰ It at all, size is a hindrance to political influence, according to Olsen's theory, because it creates coordination problems for collective action. Olsen, however, greatly exaggerates the problems of collective action due to size completely ignoring numerous examples of successful organization or large groups. More importantly, as David Cameron points out, Olsen fails to take into consideration the possibility that benefits of organization increase with group size. Large groups, because of their size, have better chances of achieving their goals than small groups. This, according to Cameron, creates an incentive for individuals to join large groups and a possible disincentive for organizing in small groups. See Mancur Olsen, *The Logic of Collective Action: Public Goods and the Theory of Groups* (Cambridge MA: Harvard University Press, 1995): 53-60; David Cameron, "Distributional Coalitions and Other Sources of Economic Stagnation," *International Organization*, (Autumn 1988): 567-568.

⁴⁷¹ The Coalition for Public Schools in Texas represents over three million people who belong to its member organizations (The Coalition for Public Schools, "Resource Directory: Coalition for Public Schools Organizations," <http://www.coalition4publicschools.org/coalition/resource/resource.shtmlm>, accessed 12 May, 2004). In Massachusetts, the Massachusetts Teachers Association and the Massachusetts Federation of Teachers alone represent 120,000 members (MTA and MFT sources). When one adds to these the large number of parents involved in PTAs, the school committees, and other important organizations (e.g., church education committees), the numbers reach the hundred thousands. The Massachusetts organization "Citizens for Public Schools" is comprised of member organizations that have over a million members combined (Segal interview). In England, the combined membership of the National Association for Primary Education (an advocacy organization), the National Union of Teachers, the National Association of Schoolmasters Union of Women Teachers and the National Association of Head

incarceration or mental health fields. Not all members of an organization are stakeholders according to the above definition. Some members are not actively engaged in any type of meaningful political action. Nevertheless, many of these members do have views on policy and do participate in promoting these views. One possible indication of the large number of stakeholders in education is public opinion polls ahead of elections (in both the United States and in England) in which education regularly features as one of the most important issues for the electorate.⁴⁷²

What matters, however, is policymakers' perception of the relative numbers and not the actual numbers. My interviews suggest that politicians often think of the general public as education stakeholders in the sense that they believe that the public has views on schooling and that these views potentially affect voting patterns. In contrast, neither mental health nor incarceration are considered issues that concern the general public. The perceived group of stakeholders rarely extends beyond the small (compared to education) number of organizations that operate within the domain. Hence, whether we look at the actual number of stakeholders or at the policymakers' perception of numbers, there are far more stakeholders in education than in the other two domains.

As mentioned before, the actual political power of stakeholders in policy domains is not as important as the perception politicians have of that power. Stakeholders understand this well. One interviewee, an executive director of a large mental health advocacy organization, described "making his organization look bigger than it really is" as one of his main tasks in the political realm.⁴⁷³ Even relatively inexperienced politicians are adept at translating stakeholder numbers into potential votes. Large policy domains represent

Teachers is around 700,000 (figures are drawn from organization websites and TUC website as of 8 December, 2004).

⁴⁷² In a MORI poll ahead of the 2001 election in Britain, poll respondents were asked which issues would be prominent in their voting considerations. A third mentioned healthcare and one in three mentioned education. No other single issue occurred to more than 10 percent of respondents. In a Harris Poll (United States) from June 2004, 8 percent of respondents claimed that education was one of the two most important issues that they expect government to address, far behind the war (39%), and the economy (28%). Ahead of the 2000 elections, however, (August 2000) education led the pack at 25% with social security (16%) and healthcare (15%) coming a distant second and third. The relative ranking of education depends on the urgency of other issues (e.g., the war in Iraq). Nevertheless, it is always one of the top, if not the top, issues for voters on the federal level. There is every reason to expect that its importance on the state level is even greater. (Roger Mortimore, "General Elections 2001," 10 May, 2001, <http://www.mori.com/pubinfo/rmm/ec0510.shtml>, accessed 8 December, 2004; Harris Interactive, "Most Important Issue for Government to Address," January 1993-June 2004, http://www.harrisinteractive.com/harris_poll/index.asp?PID=475, accessed 8 December, 2004.

⁴⁷³ Toby Fisher Interview, Executive Director of NAMI Massachusetts, 17 December, 2003.

both a big prize and a big risk for politicians. Small domains, and their stakeholders, have less political significance.

What does this imply for privatization of delivery? One plausible implication of the higher political standing of education is that politicians treat opposition to privatization in education much more seriously than opposition to privatization in mental health care or incarceration. A policymaker that supports privatization in the face of stiff stakeholder opposition might find that public opinion is against her and that the electorate would punish her in the ballot box if she persists in her support. This outcome would be unlikely in the case of an unpopular (among stakeholders) privatization in mental health care or incarceration.

It would be a mistake, however, to assume that policymakers know with any certainty what are stakeholder' views, let alone the public's view, on specific privatization plans. As Jacobs and Shapiro point out, politicians could view this uncertainty as an opportunity for following their own policy preferences.⁴⁷⁴ Yet, as one prominent Massachusetts politician pointed out in an interview, when the stakes are high, as is the case with privatization in education, politicians tend to be cautious.⁴⁷⁵ Rather than run the risk of a major public backlash to a radical departure from previous policy, politicians prefer incremental change that allows them to test the waters before taking the plunge. In mental

⁴⁷⁴ Lawrence R. Jacobs and Robert Y. Shapiro, *Politicians don't Pander: Political Manipulation and the Loss of Democratic Responsiveness*, (Chicago: University of Chicago Press, 2000).

⁴⁷⁵ Birmingham interview.

health care, politicians are relatively free to pursue their own policy preferences, at their preferred pace, without fearing any major political backlash.⁴⁷⁶

Large policy domains: education

My case studies support this argument. In education, privatization has proceeded at a snail's pace and has met with fierce public and political resistance. In what follows, I will substantiate this point with a discussion of privatization attempts in the Massachusetts, Texas and English educational systems.

Massachusetts schools

In Massachusetts, the Catholic Church and a number of other organizations and individuals made a concentrated push in the 1980s to change the constitutional amendment prohibiting public support for private schools (commonly known as the “no aid” amendment). The Catholic Church was, without a doubt, the leading pro-voucher organization at the time. It was motivated by both a desire to end what it saw as discrimination against religion in the constitution and a practical wish for state support for its schools. The church mobilized its parishes in two separate referendums (1982 and 1986) to change the “no aid” amendment. Politically, the Church had a strong ally in Senate President William Bulger who helped get the “no aid” question on the ballot. The supporters of change were careful not to speak of vouchers and instead presented the issue as one of ridding the state constitution from an amendment that was passed by anti-

⁴⁷⁶ This analysis, in different forms, was voiced by several politicians, none more clearly than by Texas State Senator Eliot Shapleigh.

Catholic bigots (a claim that is undisputed by the opponents of change).⁴⁷⁷ The opponents of change, organized under an umbrella organization called “Citizen for Public Schools”, stressed that a change in the amendment would undermine public schooling by allowing vouchers and other methods of funneling money from the cash-strapped public school system to private schools.⁴⁷⁸

Despite the support of the powerful Catholic Church and key politicians, the proposal was soundly defeated in public referendums in both 1982 (62% opposed) and 1986 (70%).⁴⁷⁹ Key to the defeat were both the superior resources of the opponents of change and the broadness of their coalition that included, apart from education-related organizations, civil rights organizations and mainstream religious groups.⁴⁸⁰ The clear public statement on this issue transformed the political landscape in the general court. The persistent Democratic Senate President, William Bulger, with the support of Republican governor William Weld, tried to get “no aid” passed the constitutional conference and on to the ballot once again in 1994. “Citizens for Public Schools” reminded legislators of how the public voted on the issue in previous ballot issues (i.e. overwhelmingly against change). This strategy certainly had an effect. The Republican representative, Bruce Freeman, explained:

⁴⁷⁷ William Bulger, “Question 2: Vote Yes, and be Fair to Parochial Schools,” *Boston Globe*, 24 October, 1986; Editorial, “A Summary of the Questions on the Ballot in Mass.,” *Boston Globe*, 4 November, 1986.

⁴⁷⁸ League of Women Voters, “Election 86,”; Edward Dowgiallo, “Vote No: it would Drain Public Money,” *Boston Globe*, 24 October, 1986.

⁴⁷⁹ “Ballot Issues,” *Massachusetts Political Almanac*, 1983; “Ballot Issues,” *Massachusetts Political Almanac*, 1987.

⁴⁸⁰ Perla interview; Kelley interview; Editorial, “Voting Day,” 1982; “Church Groups says Referendums are Misleading, Bad Policy,” 1986.

"I was not aware that my district voted about 2-1 against it, so I changed my vote. I'm not here to represent Bruce Freeman. I'm here to represent the view of the people in the district I represent."⁴⁸¹

The constitutional conference rejected the amendment. Since then, there has been no serious attempt to re-introduce it.⁴⁸² In fact, in the 2002 gubernatorial race Republican Mitt Romney and Democrat Robert Reich, who both voiced support for the idea of vouchers in the past, were careful to distance themselves from the unpopular issue.⁴⁸³

In Massachusetts, charter schools met with more success than vouchers largely because the majority of the public does not perceive the establishment of charter schools as privatization.⁴⁸⁴ Nevertheless, even charter schools have faced stiff opposition in Massachusetts. The two main teacher unions were opposed to the introduction of charter schools as part of the 1993 Education Reform Act but they were unable to prevent the passing of the legislation.⁴⁸⁵ However, the number of charter schools, their share in the school budget and their share of students, are all capped.⁴⁸⁶ The opposition to charter schools has recently grown stronger and drawn support not just from teacher unions but also from many local organizations.⁴⁸⁷ This opposition led to the passing of a charter school moratorium in both the Senate and the House in 2004, despite the resistance of the

⁴⁸¹ Massachusetts State Representative Bruce Freeman quoted in Chris Black, "Lobbying Hurts Private School Aid," *Boston Globe*, 7 December, 1984.

⁴⁸² "Public Aid to Private Schools Loses Battle," 1994.

⁴⁸³ "For Candidate Reich, a flip-flop on School Vouchers," 2002; "Gubernatorial Foes Spar on School Vouchers Issue," 2002.

⁴⁸⁴ University of Massachusetts Polls from 1996 to 1999 show that a majority supports charter schools although a majority is also in favor of keeping their number capped (see table 2-1).

⁴⁸⁵ Johnson interview; Kelley interview.

⁴⁸⁶ The growth of charter schools is limited by caps on the number of schools (72), the share of school district funding that can be allocated to charter schools (9%), and the share of students in each school district attending charter schools (4%) (Massachusetts Department of Education, "School Finance: Charter Schools," for FY 1998-2003; "Massachusetts Charter Schools,").

⁴⁸⁷ In the legislature's Education Committee's public hearing on charter schools (6 November, 2003) many of the speakers against charter schools were concerned parents or belonged to local education institutions.

powerful speaker of the House, Thomas Finneran, and the chairs of the Education Committee.⁴⁸⁸ The governor, however, vetoed the moratorium and his veto was sustained by the legislature after a compromise formula for charter school funding was hammered out.⁴⁸⁹ While charter schools do enjoy some public support and the support of the political leadership, the strong political opposition to them supported by a broad coalition of stakeholders implies that their continued expansion should not be taken for granted.

Texas schools

In Texas, education privatization bears a striking resemblance to developments in Massachusetts. Despite the absence of any constitutional amendment that would prohibit vouchers, as in Massachusetts, the voucher movement in Texas fared no better than its counterpart in Massachusetts. The first voucher bill was introduced in 1993 and since then a voucher proposal was presented in every biennial session except for that of 2001.

On the face of it, it seems that vouchers stood a good chance of being established in Texas. First, the Republican political leadership has been supportive of vouchers. Former Governor Bush (R) supported vouchers in 1995, 1997 and 1999. Former Lieutenant Governor and present Governor Rick Perry (R) is also a supporter of vouchers and so is the current House Speaker, Tom Craddick (R). In the last few years, vouchers have increasingly become a partisan issue characterized by one lobbyist as a litmus-test for

⁴⁸⁸ Blumer interview; Brenda Buote, "Face Moratorium Committee Mulls Senate Proposal," *Boston Globe* 22 June, 2003; "House Targets Charter Schools," 2004; "Charter Schools Face Roadblocks in Senate," 2004.

⁴⁸⁹ Scott S. Greenberger, "Romney Backed on Charter Schools," *Boston Globe*, 21 July 2004.

party affiliation.⁴⁹⁰ The Republican Party has grown in power over the last two decades to the point that in the last election cycle it secured a majority in both houses of the Texas legislature and its candidates captured all the top elective offices on the state level.

Second, in contrast to Massachusetts, the voucher supporters have the upper hand over their opponents in term of resources. Most important is the support of conservative right-wing multi-millionaire James Leininger. Leininger poured millions of dollars of his own money into establishing a pro-voucher think tank, supporting a pro-voucher PAC and filling the campaign coffers of pro-voucher politicians running for public offices ranging from seats on the State School Board of Education to the governor's office. In 1998, Leininger loaned \$1.1 million to Rick Perry's election campaign for Lieutenant Governor – a contribution that aided the little known Perry to overcome the State Comptroller John Sharp.⁴⁹¹ The *Texas Monthly* labeled Leininger as the most influential Republican in Texas ranking him as more important than the governor.⁴⁹²

The opponents of vouchers despite these unfavorable conditions, however, have consistently prevailed in the legislature. This ability of the opposition to prevent the passing of a voucher bill was especially impressive in the last legislative session. In the 2003 session, the conditions for passing a voucher bill seemed ideal. For the first time, the Republicans held a majority in both houses of the legislature and the entire leadership (governor, lieutenant governor and house speaker) was supportive of the voucher concept. Kent Grusendorf, a Republican representative who proposed charter bills in all

⁴⁹⁰ McDonald interview.

⁴⁹¹ "Million Dollar man,"; "Mr. Right," 2002.

⁴⁹² "Mr. Right" 2002.

but one of the previous sessions since 1993, was nominated the chair of the education committee. Grusendorf wasted no time, promptly proposing a pilot voucher program in H.B. 2465 (2003). The bill was designed to accommodate the opposition. The number of participating students was limited to 40,000 in eleven school districts and 10% of the funding for each voucher student would go to the sending school district, despite the fact that the district was not responsible in any way for the students' education.⁴⁹³ Clearly, this was a side payment to the public school system to gain its acquiescence. The bill passed the House committee on a 5-3 vote but never made it to the House floor or to the Senate education committee.⁴⁹⁴ The Committee Chair, Kent Grusendorf, alleged that the legislature's agenda was packed and the bill would resurface in a special session on education finance in the spring of 2004.⁴⁹⁵ This did not happen.

The failure of the bill is not merely a matter of bad timing. The opposition to vouchers in Texas is well organized under an umbrella organization called the "Coalition for Public Schools". The Coalition has forty member organizations (including education, civil rights and religious organizations) and claims to represent a combined constituency of three million members.⁴⁹⁶ While it is mainly Democrat politicians that support the coalition's cause, the coalition has also lobbied Republican legislators.⁴⁹⁷ Many Republican legislators are less than enthusiastic in their support for vouchers, in some cases because

⁴⁹³ "Vouchers threaten public education," 2003.

⁴⁹⁴ "Vouchers may be out," 2003.

⁴⁹⁵ Grusendorf interview.

⁴⁹⁶ The Coalition for Public Schools, "Resource Directory."

⁴⁹⁷ Phone Interview with Carolyn Boyle, Coordinator for the Coalition of Public Schools in Texas, December 18, 2003.

they are afraid that their constituency is opposed to vouchers.⁴⁹⁸ The member organizations mobilized their members to contact their legislators regarding the impending voucher bill and organized a mass rally at the capitol.⁴⁹⁹ Also, they notified their members of different legislators' views on vouchers thus creating a strong incentive for legislators to oppose vouchers so as not to lose votes.⁵⁰⁰ The Coalition's work may have helped to move Texas public opinion from a generally favorable stance on vouchers to a more ambiguous view (see table 4-2).

Table 4-2: Texas public's support for vouchers and voucher pilot program

	Support for vouchers			Support for voucher pilot program		
	Yes	No	Other	Yes	No	Other
1995	55%	35%	10%			
1998	46%	43%	11%	56%	36%	8%
1999	41%	49%	10%	45%	46%	9%
2002	40%	47%	13%	47%	44%	9%

Sources: Monica Wolfson, "Poll: Texans split on vouchers, support pilot testing programs," *Scripps Howard News Service*, 16 November, 2002; A. Phillips Brooks, "Battle lines shift in school voucher fight; Less Public Support" *Austin American-Statesman*, 16 February, 1999.

The story of Texas vouchers demonstrates that privatization in education is very difficult to achieve even in a state that has weak unions (teacher unions withstanding⁵⁰¹), a right-wing leadership and strong financial backing for the voucher movement. The combined

⁴⁹⁸ This, for example, was cited by Republican education committee member, Representative Bob Griggs, as the reason why he decided to vote against the proposed voucher bill. ("Texas School-Voucher proponents push for house debate," 2003.)

⁴⁹⁹ Ty Meighan, "Teachers flock to Capitol in protest of proposed education cuts," *Corpus Christi Caller-Times*, 18 March, 2003.

⁵⁰⁰ Tounget interview.

⁵⁰¹ See *Texas Politics* (2002), 80-84.

power of education stakeholders makes many politicians apprehensive about supporting a position that could cost them dearly at the ballot box.⁵⁰²

Although charter schools in Texas have fared better than vouchers, the charter school movement is also facing adversity. Charter schools were established by a bi-partisan coalition in 1995. The legislature conferred on the State Board of Education the authority to approve charters. The Board of Education, dominated by Republican members, liberally approved charters in the first four years (see table 2-2). This policy conformed to Governor Bush's desire to see as many charter schools as possible open their doors.⁵⁰³

The permissive approach of the State Board of Education to charter approval, however, unintentionally undermined it. By 2000, the media published more and more stories of irregularities and abuses in charter schools.⁵⁰⁴ These stories focused public attention on the failings of charter schools and led the Speaker of the House, Pete Laney, to request the Education Committee to investigate and issue a report on charter schools. The report, published in 2000, was far from favorable. It found that the State Board of Education granted charters without a proper review process, that monitoring of existing schools was inadequate, and that the structure of charter school boards failed to insulate them from business interests. In the following legislative session in 2001, Representative Jim Dunnam (D) proposed H.B. 6, co-sponsored by Rick Hardcastle (R), which was intended to address the reported failings in charter schools. Among the recommendations made in

⁵⁰² This is especially true of legislators – Democrat or Republican – that represent sparsely populated districts in which the public school system is by far the largest employer (Patterson and Schlomach interview; McDonald interview).

⁵⁰³ "Bush Pushes Hard for Charter Schools," 1996.

⁵⁰⁴ "A Review of Charters in Trouble," 2000; "Charter School Failings Aired," 2001.

the bill was a two-year moratorium on charter school expansion. The Chair of the Senate education committee, Teel Bivins, rejected the moratorium proposal and instead proposed a bill that dropped the moratorium and moved the charter approval authority from the State Board of Education to cities and counties.⁵⁰⁵ Dunnam strongly opposed the Senate version of the bill arguing that instead of slowing the growth of the charter school movement it would lead to even faster and less regulated expansion. Bivins could have killed the bill outright but instead decided to iron out the differences with the House version in a conference committee. During this period, the media continued to air new stories about charter school scandals and to follow closely the progress of H.B. 6 through the legislative process. This put pressure on legislators to pursue the issue.⁵⁰⁶

In the conference committee, Bivins convinced Dunnam to drop the idea of a moratorium in favor of a cap on charter school growth. H.B. 6 set the cap at 215 at a time when there were already 190 approved charter schools, thus limiting the increase in the number of charter schools to 25.⁵⁰⁷ The compromise bill passed the House and the Senate and waited for the governor's signature. Governor Rick Perry was opposed to the bill and could have exercised his veto power to kill it.⁵⁰⁸ Perry, however, merely refrained from signing the bill, a measure that signaled his displeasure but did not affect its enactment into law. Interestingly, interviewees who both supported and opposed the bill thought the governor's main reason for not exercising his veto power was that he did not want to be

⁵⁰⁵ "Senate Guts House's Charter School Legislation," 2001.

⁵⁰⁶ For example, see "Probe Stirs up Charter School Flap," 2004.

⁵⁰⁷ Dunnam interview

⁵⁰⁸ Maeve Reston, "Ban on Charter Schools Survives," *Austin American-Statesman*, 5 April, 2001; Janet Elliot, "Perry Opposes Moratorium on Charter School Grants," *The Houston Chronicle*, 6 April, 2001.

publicly viewed as a supporter of the bad charter schools that were the focus of intensive media coverage.⁵⁰⁹

Since the passing of H.B. 6, the number of new charter schools approved has dramatically decreased, casting a shadow on the future of charter schools in Texas (see Table 4). Two central actors (The Chair of the Senate Education Committee and the Governor) who were not interested in dramatically decreasing charter school growth could have blocked H.B. 6. The negative media attention that charter schools received, however, appears to have made charter school proponents reluctant to stand up for the schools at the price of a drop in popular support.

English schools

Education privatization in England has proceeded very slowly with some major setbacks along the way (see table 2-3). Under the conservative government in the 1980s and the 1990s, England had experienced a number of privatization initiatives – none of which had gone very far. In 1980 the new government of Margaret Thatcher introduced the Assisted Places Scheme that offered students from struggling areas scholarships to private schools. The conservative government tried to deflect some of the criticisms of this privatization program by limiting the number of scholarships to 25,000 and making these scholarships available only to children from disadvantaged homes. The scheme was also supposed to be funded by “new money” not from the education budget. Nevertheless, Labour led the opposition against the scheme. The party sent a letter to private schools informing them

⁵⁰⁹ Patterson and Schlomach interview; Dunnam interview.

that if the Scheme were approved, the Labour Party would abolish it immediately when back in power; a promise that Labour fulfilled eighteen years later.⁵¹⁰

The 1988 Education Reform Act established the Grant Maintained Schools that allowed public schools to opt out of their Local Education Authority. In a Grant Maintained School, the Governing Body of the school and the head-teacher controlled the use of the school budget and the Governing Body owned the school assets. In effect, the Governing Body could sell school assets and retain the revenue. Charitable trusts could control these schools through the governing body, thus paving the way for nonprofit private management and ownership of publicly funded schools. In practice, however, the difference between Grant Maintained Schools and regular Local Education Authority schools was small.⁵¹¹ Opponents of Grant Maintained Schools often characterized them as a form of privatization. But, in contrast to charter schools in the United States, there were hardly any real private sector involvement in the management of the schools and certainly no for-profit involvement.⁵¹² Nevertheless, Labour portrayed the Grant Maintained Schools as a form of privatization in education and when Labour came to power in 1997, it watered down the Grant Maintained Schools into Foundation Schools that retained some of the characteristics of the Grant Maintained Schools, yet were returned to the authority of the Local Education Authorities.⁵¹³

⁵¹⁰ *The State and Private Education* (1989): 36-41; Tapper (1997); Simon Targett, "Schools Drop Fight for Assisted Places," *Financial Times* (London), 29 May, 1997.

⁵¹¹ Walford (2000).

⁵¹² Martin Rogers interview.

⁵¹³ Turner interview; Theakston, interview.

The Conservative Party did not seriously contemplate direct privatization of educational services in the form of voucher programs or contracting-out management to private organizations despite principled support for the concept that goes back to the mid-1970s. Thatcher clearly supported private vouchers stating that:

“Keith Joseph [the Secretary of State for Education] and I had always been attracted by the education voucher, which would give parents a fixed – perhaps means tested – sum, so that they could shop around in the public and private sectors of education for the school which was best for their children. The arguments against this were more political than practical. However, Keith Joseph recommended and I accepted that we could not bring in a straightforward education voucher scheme. (...) Through the assisted places scheme and the rights of parental choice of schools under our 1980 Parents’ Charter we were moving some way towards this objective without mentioning the word ‘voucher’”.⁵¹⁴

Even the Grant Maintained Schools were, according to Thatcher, a target for criticism and allegations of privatization in education by the opposition. Thatcher had to give assurances in the 1987 election campaign that these schools would remain in the public sector, despite her own preference for privatization.⁵¹⁵ Keith Joseph also conceded that vouchers were politically impracticable.

“I wanted vouchers simply because they transfer in one go from the producers to the consumers. (...) But I was a frustrated enthusiast – because I was forced to accept that largely for political reasons it wouldn’t be practicable. (...) In the sense...that you would have very controversial legislation, which would take two or three years to carry through, with my party split and the other parties unanimously hostile on wrong grounds...and all the producer forces hostile.”⁵¹⁶

The Conservative Government sensed that the public would react negatively to major privatization of delivery initiatives in the two large universal service domains – education

⁵¹⁴ Thatcher (1993), 591.

⁵¹⁵ Thatcher (1993), 578.

⁵¹⁶ Keith Joseph quoted in Clyde Chitty, “Privatisation and Marketisation,” *Oxford Review of Education*, Vol. 23, 1 (March 1997): 45-62.

and general healthcare. The government did not want to alienate the public and, therefore, steered away from these controversial areas.

Privatization of education efforts in England have continued under the Labour government. Yet these initiatives focus on ancillary services, through PFI, and not on core educational functions. Education privatization in England demonstrates that politicians limit the scope of privatization out of political concerns and even successful privatization or quasi-privatization efforts are subject to reversal.

In all three cases of privatization in education, the reason that privatization made so little headway and encountered major setbacks is that the perceived opposition to privatization was considered to be politically powerful and, therefore, not to be trifled with. Thatcher (and perhaps Blair as well) in England, Weld and Bulger in Massachusetts, Bush and Perry in Texas all wanted private delivery to play a much bigger role in education than it had played previously. The opposition, however, was strong enough to prevent major privatization initiatives from being implemented and, in some cases, from even being proposed. The key to the opposition's power is its size and broad appeal. While unions are powerful actors, when they are alone in their opposition (e.g., the establishment of charter schools in Massachusetts), they are surmountable obstacles in the path of privatization. Yet if a broader range of actors in the education sphere join the unions in opposing privatization, then this creates a force that even right-wing politicians (e.g., Republicans in Texas) find difficult to ignore.⁵¹⁷

⁵¹⁷ It is plausible that the broadening of the anti-privatization coalition beyond unions also makes the anti-privatization arguments more credible to school children's parents and other segments of the public. Many

Privatization in small domains (mental health and incarceration)

In contrast to privatization in large domains, privatization in small domains is less difficult and usually does not experience the back-and-forth dynamics of privatization in large domains. There are several caveats. First, even in relatively small domains there could be large institutions that concentrate a fair number of stakeholders. Such institutions would hold considerable clout on a local level and could work effectively to block or slow down privatization at least in their own facility. This caveat applies in the case of prisons that often have more than a thousand workers directly employed. Mental health hospitals also fall into this category of large institutions in a small domain. Second, a strong emotional plea could make up for lack of political clout. This appears more to be the case in mental health care than it is in incarceration, most likely because mental health patients command more sympathy than criminals. Nevertheless, in my case studies I have witnessed how this factor has influenced politicians' actions on a range of issues but not on mental health privatization.

Privatization in small domains is not always easy or straightforward. Yet it is far easier than in a large domain. One Massachusetts state senator explained the difference between privatization of education and mental health with reference to the public's attachment to the service they almost all used and indifference to services they know and care little about. Politicians interested in privatization are aware of this difference and are therefore

people would not seriously consider arguments that are promoted exclusively by organizations that they view as having a strong vested interest in preserving the existing public system.

much more apprehensive about privatizing a large domain than a small domain.⁵¹⁸

Politicians in Texas and England have echoed this insight into the political considerations of privatization. Stakeholders in small domains often complained that they lacked influence over policy makers because the political clout of the domain's stakeholders is not very great. Not only is it the case that the majority of the public has no direct experience with services in these domains, media attention is, compared to the large domains, very limited. As a result most of the public is unaware of developments in these domains. Privatization could proceed smoothly, as was the case in English mental health care in the 1990s, or in the face of opposition, as was true in Massachusetts mental health care during the same period, but in both cases the general public will remain largely ignorant of the process. Although privatization sometimes faced intense opposition, in five out of six case studies of small domains examined here, it proceeded nonetheless. In what follows, I examine with varying detail, the opposition (or its absence) to privatization in the small policy domains and its impact on privatization policy.

English mental health

Privatization of English mental health care started with the introduction of uncapped social security reimbursement for patients in private homes in 1980, accelerated with the passing of the 1990 Community Care Act, and expanded to institutional mental health care in the last decade. (This process will be addressed in greater detail in the discussion of institutional restructuring later this chapter.) The privatization of mental health care in England created little controversy for several reasons. I will discuss later on two important reasons – the prominence of de-institutionalization and the expansion of the

⁵¹⁸ Pacheco interview.

mental health field – but for now, I would like to mention that one reason for the absence of opposition is the fact that very few people – even among those within the domain – are aware of the extent of privatization. There have been very few attempts to measure the extent of private provision, and few people are aware of just how far privatization in mental health care has progressed in recent years. The changes have been, however, nothing short of dramatic (see figure 2-1). Privatization in English mental health care is a continuing process that has yet to face any significant opposition.

English incarceration

Private prisons in England (and Britain in general) were several years in the making until they were authorized in the Criminal Justice Act of 1991. This privatization faced opposition from a broad spectrum of unions, academics, journalists and advocacy groups.⁵¹⁹ There is little indication, however, that this opposition had much effect on the conservative government. The Secretary of State in the Home Office during the period in which the first private prisons opened their gates and current Conservative Party leader, Michael Howard, asserted that although opposition voices were far more prevalent than supporters, they had no impact whatsoever on privatization.⁵²⁰

This attitude of ignoring the opposition to privatization carried on to the Labour government. The Labour Party while in opposition was adamantly opposed to prison privatization. Its leaders promised to end privatization once they took power.⁵²¹ Once in office, however, Labour not only did not close existing private prisons, it actually

⁵¹⁹ Liebling interview.

⁵²⁰ Howard interview.

⁵²¹ “Straw Pledges to Halt Prison Privatization,” 1996.

contracted for new ones and reversed its policy on private prisons.⁵²² The main prison union, the Prisoner Officers Association, felt betrayed and launched a public campaign against the Labour Party claiming that the Home minister was a liar.⁵²³ The glaring rift with the union, however, did not change the course of Labour policy on prison privatization, which continues to expand.

Texas mental health

The Texas mental health care case is notably different from the English case in the extent of privatization. Yet as far as the effectiveness of the opposition is concerned the similarity of the two cases is striking. In Texas, privatization of the mental health care system did not start in earnest until the mid-1990s. A few private providers did exist but they received no more than the crumbs from off the public table.⁵²⁴ This situation changed first with the passing of H.B. 2377 and next with the launching of the NorthSTAR experiment in the Dallas area. H.B. 2377 created three pilots in which Mental Health and Mental Retardation Centers retained administrative authority but, as authorities, distanced themselves from the provision function in an attempt to broaden and diversify the provider base.⁵²⁵ The bill was not perceived as privatization, as a result faced no opposition whatsoever in the House Health's Committee public hearing and was approved unanimously.⁵²⁶ The directors of the three pilot sites – Travis County, Tarrant County, and Lubbock Regional Mental Health and Mental Retardation Centers – have all claimed that the legislation did bring about a significant change in private provider

⁵²² Quin interview; "Minister: We Were Wrong about Private Prisons," 1998.

⁵²³ James Clark, "Officers Brand Minister a Liar over Private Jails," *Daily Mail*, 20 May, 1998.

⁵²⁴ Epps interview.

⁵²⁵ H.B. 2377, section 9, 22 May, 1995.

⁵²⁶ H.B. 2377, Hearing in Public Health Committee on 19 April, 1995.

involvement in delivery.⁵²⁷ The practical experiences created in the pilot programs were disseminated to the other centers facilitated by the Texas Department of Mental Health and Mental Retardation.⁵²⁸

The NorthSTAR model⁵²⁹, in contrast to H.B. 2377, was generally perceived as privatization and, consequentially, was the target of more criticism. NorthSTAR achieved privatization in two ways. First, a for-profit Behavioral Health Organization was brought in to administer the mental health system in the seven NorthSTAR counties instead of the five Mental Health and Mental Retardation Centers that played this role before. Second, providers were organized in Specialty Provider Networks. Six out of the current eleven networks (patients are free to choose among the networks operating in their area) are private entities while the remaining five are Mental Health and Mental Retardation Centers. This transformation of the provision structure resulted in the transfer of all contracting and financial responsibilities to a private company and an increase in the share of the budget allocated to private provider networks from just over 10% in 2000 to 40% in 2003.⁵³⁰ Community Mental Health and Mental Retardation Centers are opposed to NorthSTAR and their opposition is voiced by their trade association: the Texas Council of Community Mental Health and Mental Retardation Centers.⁵³¹ Be that as it may, the model is considered a success by the Texas Department of Mental Health and

⁵²⁷ Evans interview; Castle interview; McDermott interview..

⁵²⁸ NorthSTAR," 2003, 11.

⁵²⁹ NorthSTAR constitutes a new institutional framework for mental health delivery that the Texas Department of Mental Health and Mental Retardation has established in seven counties in the Dallas area. The responsibility for case management has been transferred from Mental Health and Mental Retardation Centers to private Behavioral Health Organization(s) that contract with the local authority.

⁵³⁰ NorthSTAR SPN Market Share Tables.

⁵³¹ Skelton interview.

Mental Retardation and others so expansion of the model to other counties is highly likely.⁵³²

The most dramatic piece of legislation regarding privatization of mental health in Texas has passed only recently in the last session (78th Legislature 2003). H.B. 2292, section 2.74 states:

“(e) In assembling a network of service providers, a local mental health and mental retardation authority may serve as a provider of services only as a provider of last resort...”.

The practical meaning of this clause, widely known as the “last resort” amendment, is that public Mental Health and Mental Retardation Centers, which currently function as public mental health authorities, would no longer be able to provide a service if there were any private providers willing to contract for the service. The bill’s implication could very well be radical privatization of the Texas publicly funded mental health system. H.B. 2292 was a controversial bill that was passed largely on party lines. The most controversial sections, however, had nothing to do with privatization. The Senate Finance Committee discussed H.B. 2292 for over ten hours on May 22nd and May 23rd, 2003 with few references to the two privatization amendments (one other privatization amendment was dedicated to the privatization of mental health hospitals). In fact, the “Last resort” amendment was mentioned only once and even that was not by one of the legislators but by a concerned parent of a mental health patient, not affiliated to any organization, who objected to the amendment because it undermined the authority of the MHMRC, which

⁵³² Maples interview; Lovelace interview; “NorthSTAR” (2003).

she trusted.⁵³³ The majority of mental health advocacy groups were opposed to the amendment, with the exception of Texas NAMI, but that did not prevent the section from being approved without any changes in language.

The bill as a whole passed mainly because the Republican majority, backed by the governor, was committed to cost-containment measures during a budget crisis.⁵³⁴ The relative silence of the opposition on the privatization measure can be partially explained by misunderstandings regarding the intent of the “last resort” section. The author of the amendment, Representative Talmadge Heflin (R), admits that he intended the section to apply only to mental retardation services, but its general language made the section applicable to mental health services as well.⁵³⁵ One of the main opponents of the bill, however, points to a different reason for the opposition’s silence. Since the agenda was packed with other issues that appeared more urgent, the opposition focused its attention elsewhere.⁵³⁶ Whatever the case, H.B. 2292 could have a profound effect on mental health privatization in Texas. To date no significant opposition has mobilized against the “last resort” section.

Texas incarceration

Texas incarceration privatization witnessed an initial period of expansion, but has tapered off in the last few years. It is unclear, however, whether the slowdown in privatization can be attributed to the opposition or to something else. Opposition to S.B. 251 (1987),

⁵³³ Holly Legace testimony, Senate Finance Committee, 22 May, 2003.

⁵³⁴ “Mental Health: Promised state funds only cushion larger cuts’ blow,” 2003.

⁵³⁵ Heflin interview.

⁵³⁶ Shapleigh interview.

the bill that authorized the construction of the first four private state prisons, was scarce. Few legislators could find fault with a bill that was supported by an overwhelming majority in both parties, and by the Texas Department of Corrections.⁵³⁷ The bill was generally viewed as an innovative way of addressing the pressing over-crowding problem in state prisons while at the same time cutting costs. Subsequent privatization, however, was different. During the early and mid-1990s, the state of Texas dramatically increased its prison capacity. Many local county authorities viewed this expansion as an economic opportunity. The counties contracted with private companies to either build new prisons/jails or manage existing ones. The counties, and indirectly the private companies, contracted with the state of Texas, the federal government and other states for inmates. Incarceration became a lucrative business for many counties.⁵³⁸ The media published the shoddy practices of some of these companies in numerous cases. The criticism of so-called “spec” (short for speculation) jails mounted and at one point, Governor Ann Richards vetoed a bill that would have allowed out-of-state prisoners to be housed in county jails. Despite the veto this practice continued.⁵³⁹ The main factor that ultimately slowed down the opening of privately run prisons was not opposition to privatization but stagnation on the demand-side. The number of inmates in Texas stabilized in the last five years, and the state currently needs no additional capacity. There is no demand for new private prisons. Privatization of existing public facilities, however, is still an option – an option explored in a number of bills proposed in the last legislative session (H.B. 1480, H.B. 1669 and H.B. 2190). These bills all died at the committee stage for reasons that will be discussed later.

⁵³⁷ Cummins (2000), 32.

⁵³⁸ Cummins (2000), 75-90.

⁵³⁹ Cummins (2000), 103-105.

Massachusetts mental health

Privatization of Massachusetts mental health services proceeded in two stages that differed dramatically in the level of opposition to privatization but not in the outcome. Mental health service privatization started relatively early in Massachusetts. During the 1970s, influenced by the de-institutionalization philosophy in mental health care, four state mental health hospitals were closed.⁵⁴⁰ Some of the patients were transferred to nonprofit organizations that operated community care services funded by the state. In the remaining seven hospitals, the patient census was steadily declining. Numerous patients were moved to privately provided community settings. The opposition to this type of privatization was weak. A major reason for this was the increase in mental health funds during the 1980s that allowed for the retention of public sector workers despite the decrease in the number of patients served by the public sector. As one union leader described the situation: “under Dukakis we fell asleep despite privatization.”⁵⁴¹ While there was some opposition to government policy, it paled in comparison to the opposition that Governor Weld faced in the next wave of privatization.⁵⁴²

Governor William Weld initiated a second round of privatization, which was explicitly recognized as such, during his first few months in office. The Republican governor decided to act on the recommendations of a Governor’s committee⁵⁴³ and the advice of his mental health commissioner and close three additional hospitals, move patients to the

⁵⁴⁰ Hogarty (1996).

⁵⁴¹ Cohn interview.

⁵⁴² Cohn interview; Trilling interview.

⁵⁴³ “Actions for Quality Care,” 1991.

community or to general hospitals, and to get a private Behavioral Health Organization to run the state's system of managed care. Weld set out to shrink the public sector and, unsurprisingly, opposition to privatization was much greater. The largest mental health advocacy group, The Massachusetts Alliance for the Mentally Ill, opposed Weld's policy, as did homeless advocates and some parent groups.⁵⁴⁴ Unions, such as the SEIU and AFSCME, were up in arms against the privatization and the Boston Globe – the most influential media outlet in Massachusetts – published a number of critical articles.⁵⁴⁵ The Democrat-dominated legislature was critical of Weld's privatization initiative, especially representatives from districts with mental health hospitals. Some legislators feared the loss of public sector jobs in their district. Others were concerned that privatization would make services less accessible to patients and that the for-profit managing company would drain money from public coffers.⁵⁴⁶

Despite the opposition, the targets specified in the governor's committee report were fully implemented. The number of employees in the Department of Mental Health was more than halved, from around 8,500 to 4,200; half of the state inpatients were moved out of state hospitals and four state hospitals were closed by 1993.⁵⁴⁷ In contrast to the case of charter schools, the administration found it unnecessary to make any compromises. Weld was undeterred by the opposition to privatization of mental health care. One former Department of Mental Health Commissioner pointed out that the opposition to

⁵⁴⁴ Callahan interview; Fendell interview.

⁵⁴⁵ Alan Lupo, "On the Edge," *Boston Globe*, 3 December, 1991; Robert L. Turner, "Selling Snake Oil," *Boston Globe*, 29 April, 1993.

⁵⁴⁶ Elias interview; Parente interview.

⁵⁴⁷ Trilling interview; Massachusetts Taxpayers' Foundation Budget, "State Budget 1995: Department of Mental Health," 25.

privatization in Massachusetts has limited political influence because of the relative weakness of the mental health community as a political constituency.⁵⁴⁸ A Massachusetts senator concluded, in another interview, that the relative political power of the education and mental health constituencies could explain, to some extent, the different privatization trajectories that their corresponding domains follow in Massachusetts.⁵⁴⁹

The case of Massachusetts' incarceration is the only one out of the nine case studies in which no privatization of core services took place (several ancillary services, such as catering and mental health care, were privatized). I will discuss the reasons for this outcome later in the chapter. The five other case studies of small domain privatization, however, demonstrate that privatization in small domains tends to occur out of the public eye and even where opposition is intense it does not necessarily carry the day. Privatizing policymakers can sustain significant privatization drives even in the face of a vocal opposition.

Domain size and motivation/justification

The difference in domain size affects not just the ease and extent of privatization, but also influences other aspects of the process. Privatization is pursued for various reasons: cost-containment, diversification of the provider base, quality improvement, to name just a few. Policy makers, politicians in particular, often find it necessary to explain and justify their privatization policy to stakeholders and the general public by appealing to some of the afore-mentioned reasons. There is little reason to expect that in all instances

⁵⁴⁸ Callahan interview.

⁵⁴⁹ Rosenberg interview.

policymakers would appeal to the exact same set of justifications for privatization. In fact, Keon Chi and Cindy Jasper conducted a survey of executive agencies in different American states and asked respondents about motivations for privatization in their respective agencies. The respondents in both corrections agencies and mental health agencies viewed cost saving as a leading reason for privatization (48.6% of respondents in corrections and 45.2% in mental health). In education, the response was markedly different. Only 20.2% of respondents thought cost-containment was a leading reason for privatization (Increased political support was the leading reason for privatization cited by education agency heads).⁵⁵⁰

The differences among domains reported by Chi and Jasper are compatible with findings from my case studies. Cost containment was frequently mentioned as a central motivation for privatization in the incarceration and mental health services.

Massachusetts mental health

In the case of Massachusetts' mental health care privatization, a governor's commission suggested closing three state hospitals and moving patients from state mental hospitals to community settings and general hospitals in order to cut costs. These closings were thought to be cost-effective because the hospitals were at well below full capacity. Furthermore, patients in state hospitals were not entitled to federal Medicaid support. In community placements and in general hospitals (with less than 50% psychiatric patients), in contrast, some patients would receive federal Medicaid funds with matching state

⁵⁵⁰ Keon Chi and Cindy Jasper, Council of State Governments, "Private Practices: A Review of Privatization in State Government," 1998.

Medicaid funds; thus the state could save significant sums of money by shifting costs to the federal government through privatization.⁵⁵¹

Texas mental health

In Texas mental health, recent privatization legislation explicitly tied privatization to cost-containment. In an effort to cut mental health costs, representative John Davis (R) proposed an amendment (later to become section 2.78 of H.B. 2292, 2003) that would allow the privatization of one state mental health hospital if cost savings of 25 per cent could be demonstrated.⁵⁵² Whether such cost savings are realistic or not is an open question. What is clear, however, is that in the domain of mental health care, privatization and cost savings are closely linked in the minds of policymakers.

English mental health

In English mental health, privatization of mental health services throughout the 1980s and the passing of The 1990 Community Care Act were driven, to some extent, by financial considerations. The main reason for the movement of patients from NHS facilities and local authority residential homes for the mentally ill (both public facilities) to private residential and nursing homes during the 1980s was primarily to shift costs of services from the NHS and local authorities to social security rolls (to be discussed in greater depth later).⁵⁵³ Although this policy constituted a form of cost-savings for the NHS and local authorities, the overall expenses of government were increasing. In 1979, only £10 million were spent on reimbursement of patients in private residential care. By

⁵⁵¹ "Actions for Quality Care," 1991.

⁵⁵² Haeber interview

⁵⁵³ Lewis and Glennerster (1996), Chapter 1.

1993, the sum had ballooned to £2.4 billion.⁵⁵⁴ The Community Care Act of 1990 was primarily intended as a measure to rein in costs.⁵⁵⁵

Texas incarceration

The incarceration case studies also demonstrate a clear and explicit connection between privatization and cost containment. In Texas, S.B. 251, which authorized the opening of four private prisons, was supported by politicians for a variety of reasons, not least among them financial ones. As early as December 1984, governor Mark White (D) publicly endorsed prison privatization in a news conference as a way of addressing Texas's financial crisis.⁵⁵⁶ Private companies pitched private prisons as a cost saving opportunity to the Texas legislature.⁵⁵⁷ Cost savings were, no doubt, on the minds of most legislators who voted for the bill in 1987.

A recent attempt at prison privatization, in 2003, also put cost cuts front and center. A report issued by the by the State Criminal Justice Policy⁵⁵⁸ found that the per diem cost of an inmate in a state run jail are \$7 more than in a comparable privately run jail. This finding spurred the Chair of the House Corrections' Committee, Ray Allen (R), to sponsor three bills that were intended to increase prison privatization.⁵⁵⁹ The authors of the bills proposed that 10 per cent cost savings would constitute a prerequisite for

⁵⁵⁴ Darton (1998): 26-30.

⁵⁵⁵ Lewis and Glennerster (1996); Bowis interview.

⁵⁵⁶ Ethridge (1990), 54-55.

⁵⁵⁷ Ethridge (1990), 56-59.

⁵⁵⁸ "Mangos to Mangos," 2003.

⁵⁵⁹ Gilmore interview.

privatization.⁵⁶⁰ Much of the opposition to the bill was aimed at questioning the claim that private prisons save money.⁵⁶¹

English incarceration

In England, there was also a strong connection between cost containment and prison privatization. Prior to the 1991 Criminal Justice Act that authorized the construction of private prisons, several publications and reports advocated prison privatization to overcome the problem of insufficient funding. The first publication to propose prison privatization was the Adam Smith Institute's *The Omega File* (1985).⁵⁶² The publication argued that one of the advantages of private prisons is that they would lower costs. In a similar vein, the parliamentary Select Committee on Home Affairs, following a 1986 visit to two private incarceration facilities in the United States, issued a majority report that stressed the financial advantages of private prisons.⁵⁶³ Cost containment arguments in favor of privatization were not limited to the right-wing of the political spectrum. Once Labour came into power, the Secretary of the Home Office, Jack Straw, decided to expand private prisons. Straw justified this policy with reference to a recent cost comparison conducted by the Home office that showed that private jails were eight to fifteen percent cheaper than their public counterparts, mainly due to the lower wages paid in private prisons.⁵⁶⁴

⁵⁶⁰ Michele Deitch, "Privatizing Prisons won't fix Texas' budget problems," *Austin American Statesman*, 10 May, 2003.

⁵⁶¹ See, for example, Michele Deitch, "White Paper on Prison Privatization Bills HB1480, HB1669, and HB2190."

⁵⁶² Pirie interview; James et al. (1997).

⁵⁶³ James et al. (1997) 50; Nathan (2003), 163.

⁵⁶⁴ "Prison Staff Snub Straw,".

While privatization in mental health services and incarceration is often (though not always) motivated, or at least justified,⁵⁶⁵ with reference to cost containment, this is clearly not the case in education. I have yet to come across one example, in any one of my three educational case studies, of a privatization argument being couched in the terms of cost containment.⁵⁶⁶ Privatization in education is almost always explained as a way to increase choice for parents, provide higher-quality opportunities for disadvantaged children, and to stimulate innovation in educational techniques.

What explains these differences between education, on the one hand, and mental health care and incarceration, on the other hand? The size of the domain, once more, is key. Cost containment and cost cuts are legitimate public goals, but they are associated with lower quality. Although some policymakers argue that the relation between funding and quality is weak at best,⁵⁶⁷ most policymakers, stakeholders, and most probably the general public, tend to believe that a cut in funding would ultimately reduce quality or accessibility of services. In a large domain, in which a large swath of the public has a personal stake, cost containment rationales for privatization, therefore, would be very unpopular. If policymakers were to associate privatization with cost-containment, the public would think of privatization as a necessary evil at best and as selling their children's future at worst. Small domains, however, are of less direct interest to the public and far fewer stakeholders are invested in the domain. Obviously, such domains

⁵⁶⁵ As mentioned in the Theory Chapter, it is almost impossible to discern whether a policymaker's stated reasons for taking a certain position are, indeed, genuine or merely a cover for certain ulterior motives.

⁵⁶⁶ In England, the construction and provision of ancillary services, not core services, in schools through PFI could be justified in financial terms. Yet even in this case, PFI in schools is usually justified in reference to the speed in which new schools could be established and not by their lower cost.

⁵⁶⁷ Laney interview.

are more vulnerable to cost cuts or expenditure freezes than large domain and the general public would be less sensitive to cost-containment arguments in domains they know or care little about. Financial efficiency becomes a far more compelling argument once the quality of somebody else's services is in question rather than your own. A policymaker who announces cost-containment measures in a domain that is of little significance to most people would be perceived as fiscally prudent. A policymaker initiating cost-containment measures in a domain that touches upon the lives of most people, however, would more likely be perceived as a danger to the public good. Thus, a plausible explanation for the difference in type of justifications for privatization between education and the small domains is that cost-containment rationales are a much better sell to the public in domains, where the majority is not personally affected by a decline in service quality (or access), in contrast to large domains where the public usually has a very personal stake in service quality and access.⁵⁶⁸

This difference in regard to cost containment between large and small policy domains implies that while cost containment opportunities are a privatization facilitating factor in small domains, they are a non-factor in large policy domains. In a small domain, if conditions are such that privatization is expected to bring about cost savings then privatization becomes more likely. Drawing on the privatization experiences from the

⁵⁶⁸ This is true for two separate reasons. First, one might believe that privatization motivated by cost containment would reduce quality and /or access to a service regardless of domain. Yet in domains in which one does not have a personal stake, the negative quality-reduction factor, which affects only a small group of service recipients, would not be weighty enough to offset the positive cost-containment factor that accrue to all. Second, some people will be receptive to claims that privatization motivated by cost containment considerations will have no ill effects in a domain that they care little about, while they may be more suspicious of similar claims made in reference to a domain that is of greater value to them. Without a real personal stake, many people's psychological mindset would be to wish away the cost-containment – quality tradeoff by buying into policymakers' arguments that privatization would achieve the former without undermining the latter.

different case studies, there are two main ways to cut costs through privatization. First, labor costs are lower in the private sector than in the public sector in the small domains⁵⁶⁹. Almost all the cost savings in private prisons, vis-à-vis public ones, are attributable to lower labor costs.⁵⁷⁰ The same is true of mental health privatization in Massachusetts, and probably applies to the mental health systems in Texas and England as well.⁵⁷¹

The second method of cost saving is to shift costs to another public agency through privatization. Undoubtedly, this is a perverse way of cutting costs because it does not make overall government expenditure more cost-effective, but it is a prevalent reason for privatization nonetheless. The prospect of shifting costs from the state to the federal government by increasing the number of patients eligible for Medicaid played a role in both Massachusetts and Texas's decisions to move patients from public to private settings (in most public facilities, patients were not eligible for Medicaid benefits).⁵⁷² Shifting costs to social security rolls also played a role in local authority residential homes and NHS' facilities' decisions, during the 1980s, to transfer patients to private residential homes.⁵⁷³

These two methods of cost savings suggest that the likelihood of privatization increases:

a) the greater the anticipated wage difference between public and private sector workers

⁵⁶⁹ The advantage of lower labor costs in the private sector holds true for the education domain as well – at least in the United States (see National Center for Education Statistics, "Schools and Staffing Survey, 1999-2000," 4.) Be that as it may, as discussed above, policymakers are not motivated by cost-containment in the field of education as they are in the small domains.

⁵⁷⁰ Austin and Coventry (2001).

⁵⁷¹ Seavey (1999).

⁵⁷² Gantt and McPherson (2002); "Action for Quality Care," 1991.

⁵⁷³ Lewis and Glennerster (1996), Chapter 1.

(assuming a fixed number of workers per service), and/or b) the greater the prospects of inter-government cost-shifting due to privatization

Domain size and the budget cycle

Domain size is linked to one other important variable: the budget cycle. Privatization has often been linked to the budget cycle by both academics and politicians. In the academic literature, different writers have theorized that privatization is especially likely to occur during hard economic times as a measure of cost containment.⁵⁷⁴ This view that relates privatization to bad economic times has also been echoed by a few policymakers. A former governor of Massachusetts stated: “Unfortunately at the state and local level, generally all this talk of contracting develops when times are bad, not when times are good.”⁵⁷⁵ In a recent article, Thomas Pallesen, however, bucks this trend arguing that privatization is, in fact, adversely related to fiscal stress.⁵⁷⁶

The relationship between the budget cycle and privatization of service delivery is influenced by two important considerations. First, during a budget crisis, policymakers will seek ways of cutting costs. Privatization is one such method. Therefore, we should expect budget crises to trigger interest in privatization as a form of cost containment. Second, privatization during a budget crisis invariably implies the substitution of public providers by private providers. During a period of budget expansion, however,

⁵⁷⁴ See for example *Shrinking the State* (1998), 44-49; Rowan Miranda, “Privatization in Chicago’s City Government,” in K. Wong (ed.), *Research in Urban Policy*, Volume 4 (Greenwich CT: JAI, 1992): 31-53.

⁵⁷⁵ Dukakis interview.

⁵⁷⁶ Thomas Pallesen, “A Political Perspective on Contracting Out: The Politics of Good Times. Experiences from Danish Local Governments”. *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 17, 4 (2004): 573-587.

privatization could take the form of *addition*: new private providers are introduced into the delivery system along side existing public providers. The expanding budget allows the private sector to expand without a corresponding contraction of the public sector. Obviously, the latter type of privatization, which I call *privatization by addition*, creates less opposition than the former type of privatization, *privatization by substitution*. The higher likelihood that privatization would take the form of privatization by addition in good economic times than in bad times, implies that opposition to privatization will be greater during a budget crisis. Consequently, privatization has a greater chance of being implemented during budget expansion than during a budget contraction. The two considerations pull in opposite directions. The cost containment consideration suggests more privatization during a budget crisis, while the privatization by addition consideration suggests the exact opposite. Hence, it is unsurprising that different studies have reached opposite conclusions on this issue.

The previous discussion of the relationship between domain size and cost containment suggest that there may not exist a straightforward relationship – negative or positive – between the budget and privatization as the academic literature would have us believe. It is quite likely that domain size plays an important role in determining the effect of the budget cycle on privatization. In what follows, I examine the relationship between the budget cycle and privatization in the education case studies and then turn to the small domains.

Massachusetts schools

Charter schools in Massachusetts were introduced as part of the Education Reform Act that authorized a gradual addition of \$2 billion to the Massachusetts education budget. Furthermore, the State provided reimbursement funds for school districts to offset the decline in revenue brought about by the departure of children to charter schools (the average district funding per student followed the student to the charter school).⁵⁷⁷

Conversely, the budgetary crisis of the early 2000s, which also affected the state's education budget, strengthened the opposition against charters. Governor Jane Swift (R) eliminated the reimbursement funds as part of the FY 2003 budget.⁵⁷⁸ This buttressed the arguments of charter school critics that charter schools undermined public education. A loss of a regular public school student to a charter school meant loss of funding, with no reimbursement, for the school district. Such losses were especially painful in a period of budget cuts. Given these circumstances it is not surprising that the legislature in 2004 approved a one year moratorium on charter school expansion.

Texas schools

In Texas, charter schools were established in 1995 during a period of budget expansion.⁵⁷⁹ The expansion of charter schools continued during the later years of the booming 1990s. The slow-down in charter school privatization, as described earlier, had little to do with the economic situation. The failure to pass a school voucher pilot

⁵⁷⁷ Massachusetts Department of Education, "Reimbursement of Charter School Tuition," 1 April, 1998, http://finance1.doe.mass.edu/charter/charter_tuition.html, accessed 20 May, 2004.

⁵⁷⁸ "Romney to Seek Aid for Charter School Losses," 2003.

⁵⁷⁹ FY 1995 was the first in a stretch of seven years in which the Texas education budget expanded considerably (based on data compiled from the National Center of Education Statistics, "Common Core of Data: Build a Table," <http://nces.ed.gov/ccd/bat/index.asp>.)

program, however, does seem to be partially due to the change in Texas's economic fortunes. The 78th Texas legislature, in 2003, faced a severe budget deficit of \$10 billion.⁵⁸⁰ The budget crisis forced budget cuts across all service domains. In mental health care the need to cut costs was the driving force behind H.B. 2292 and in the field of incarceration it was the main reason for the introduction of new privatization proposals. In education, however, the impact of the budget crisis was quite the opposite – it had a dampening effect on the voucher bill. Almost all my interviewees agreed that sequestering funds for a pilot voucher program during a period of cuts to public education was politically difficult.⁵⁸¹

English schools

In England, the recent privatization initiatives of Labour have all taken place in the context of a considerable increase in the public school budgets. This was, however, not always the case during the conservative's privatization efforts. The Assisted Places Scheme was introduced during a period of education budget contraction. Even in this case, nevertheless, there evidence suggests that conservatives were intent on making it clear to stakeholders and the general public that the Scheme would not come at the expense of public education. The government announced that funding for the Scheme would not come from the regular education budget but from "new money" allocated by

⁵⁸⁰ "Vouchers Threaten Public Education," 2003.

⁵⁸¹ A possible criticism of this theory is that privatization in education, for reasons of cost-containment, is uncommon, not because it is unpopular, but because it is impractical. For whatever the reasons, privatization cannot achieve cost containment in education as it does in mental health and prisons. As one interviewee, however, pointed out, the group that has the most to gain by the establishment of a school voucher program in American education are the Catholic Schools and their typical average expenditure per student tends to be lower than that of public schools (McDonald interview). Hence, by sending public school students to Catholic Schools (and probably numerous other denominational schools), the state could probably save money.

the treasury.⁵⁸² Thus, even in the one case in which privatization in education was initiated during a budget contraction, its funding did not come from the public education finance stream in order to make it more politically palatable.

The relationship between the budget cycle and privatization in my large policy domain, education, is quite straightforward. Privatization does not occur during a budget contraction. The opposition to privatization is just too great under such circumstances. But why is it that the opposition is not counterbalanced by the increased incentive to privatize as a cost containment measure in hard economic times? As argued in the previous section, in large domains, cost containment is not considered a valid justification for privatization. In fact, privatization, under such conditions, would give special credence to the frequent claim made by privatization opponents that privatizing policymakers are trying to undermine the public system by cutting overall resources *and* by creating/financing a private alternative.⁵⁸³

Should we expect privatization in small domains to inversely mirror privatization in large domains? In other words, does privatization in a small domain primarily occur during periods of fiscal contraction? The answer is 'no'. In contrast to large policy domains, small domains are amenable to privatization during rough fiscal times. Budget crises create the need to stretch existing funding and privatization is often proposed as a way to

⁵⁸² *The State and Private Education*, (1997), 36–41.

⁵⁸³ There is, however, a counterpoint that should be considered. Although one should anticipate greater opposition to privatization in a larger domain, the budget of a large domain is a greater prize for the cost-cutting policymaker than the budget of a small domain. In situations in which very deep budget cuts are necessary, policymakers would no longer be able to avoid cuts to the large – and popular – policy domains. Yet even under such circumstances, privatization is highly unlikely. The policymaker would have enough difficulty passing unpopular budget cuts without the additional battle for privatization in a large domain.

cut costs without having to change the range of services offered. The proponents of privatization often argue that it brings about a more cost-efficient service, either because it introduces competition into the system in place of the inefficient state monopoly or because private providers are inherently more efficient than the state bureaucracy. In other cases, privatization supporters appeal to lower labor costs and opportunities for cost-shifting opened by privatization. It certainly does seem to be the case that the incentive to privatize is greater in rough times because privatization is associated with cost-containment. Nevertheless, there are numerous examples in the cases examined here of privatization during a budget expansion.

In Massachusetts' mental health care, for example, the privatization that the system experienced during the 1980s occurred during good fiscal times for both the state and the human service agencies. Privatization in the 1990s, in contrast, was adopted at least partially as a response to the budget crunch.

One central reason for the slow down in the privatization of incarceration in Texas is that all privatization to date took the form of privatization by addition. In order to accommodate the growth in the prison population and solve the overcrowding problem, the Texas prison system had to expand considerably. This allowed for the growth of private facilities without the need to close any public prisons or jails. In fact, during the 1990s, the public sector also expanded although its relative share in services diminished. The possibility of privatization by addition, however, no longer exists in Texas prisons now that overall capacity is sufficient to accommodate the entire inmate population. Any

new private capacity would have to come at the expense of the public sector. The opposition to the 2003' privatization bills was far greater than opposition to the establishment of private prisons in the 1980s and 1990s. This opposition was, to a large extent, the reason why the bills failed.⁵⁸⁴

In the case of small domains, there is more of a balance between the conflicting considerations of cost containment and opposition to privatization by substitution than exists in large domains. On the one hand, privatization as a cost containment measure is an acceptable policy in small domains – an especially appealing policy during fiscal stress. On the other hand, privatization by addition creates less opposition than privatization by substitution, increasing the likelihood of small domain privatization in good times. Thus, in contrast to the case of large domains, the budget cycle is probably not a good predictor of privatization in small domains.

Facilitating factors and strategies

Apart from the two major variables determining privatization – the size of policy domain and radical institutional restructuring (yet to be discussed) – there are a number of other smaller facilitating factors or strategies that have some effect.⁵⁸⁵ I have divided them into two groups: facilitating strategies for large policy domains and facilitating factors for large and small policy domains.

⁵⁸⁴ Gilmore interview.

⁵⁸⁵ Why do I claim that the effect of these factors is smaller than the two “large” variables discussed in more detail? The impact of these variables is small on either or both of the following dimensions. First, in several of the case studies these factors do not apply. Second, it is not clear how influential these factors really are even in the case studies in which they do apply. Nevertheless, these factors do seem to play some role in facilitating privatization or, at least, policymakers think they matter.

Facilitating strategies in large policy domains

The discussion of privatization in large policy domains might create the impression that there will be no privatization due to the real or anticipated opposition. As table 1 demonstrates, however, there is some privatization even in education. This is also true of General healthcare in England, another large policy domain that is predominantly public. There are a number of strategies that are used by policy makers to facilitate privatization in a large domain. Not all of them are successful.

Privatization targets the periphery of the service

The reason why privatization of the periphery is easier than that of the core has to do with the intensity of opposition. Stakeholders, especially service recipients, are afraid that privatization would adversely affect the quality of services. If, however, the specific services privatized are not the ones that the stakeholders primarily care about, but rather support services or services delivered to a small sub-constituency, opposition is likely to be weak.

One type of peripheral privatization is the privatization of ancillary services. The case of PFI in English education is a good example of this. Since the rise of Labour to power, new schools in England are in most cases established through PFI. While the teaching and academic management of the school remains the domain of the public sector, the construction and maintenance of the schools, under PFI, are the responsibility of private

sector firms. Thus, for example, janitors in PFI schools no longer belong to the public sector, but are private sector employees.

A second type of privatization of peripheral services in English education is the contracting out of Local Education Authority (LEA) management to private firms.⁵⁸⁶ LEAs are responsible for the execution of several of the more complex administrative tasks of the education system. The planning of student placement in schools, for example, is one of the main responsibilities of the LEA.⁵⁸⁷ Under the Labour government, a number of LEAs were assessed as failing and the government contracted out their management to private firms.⁵⁸⁸

Finally, peripheral privatization could also target what is unequivocally a core service, but one that is provided to a peripheral group within the recipient community. The case of special education is a good example of this type of peripheral privatization. In all three political systems, special education is delivered in part by private organizations, whether proprietary or nonprofit. There is something puzzling about this given that a central argument of anti-privatization groups is that privatization subjects vulnerable individuals to the whims of the market. Special education students are arguably the most vulnerable sub-group of students, yet their education is more likely to be administered by private sector teachers than that of regular students. One interviewee in England explained this puzzle with reference to the marginal status of special education in British education.

⁵⁸⁶ Fitz and Beers, (2001); Bridger interview.

⁵⁸⁷ See Department for Education and Employment, "The Role of the Local Education Authority in School Education," 2000.

⁵⁸⁸ Bridger interview. Cambridge Education Associates manages the Islington LEA under a seven-year contract.

Special education can be privatized because neither the general public nor the unions show much interest in it.⁵⁸⁹ This type of peripheral privatization, privatization of core services for peripheral sub-groups, is also of special significance because it suggests a way in which core services in large policy domains could eventually be privatized. If it is possible to separate specific groups of service recipients from the majority of recipients, a domain could be privatized piece by piece.

Rhetoric that obfuscates privatization

Some policymakers find it advantageous to avoid the word “privatization” and other privatization-related terms that bear a negative connotation for stakeholders. The underlying idea is that by avoiding certain terms that create a negative public reaction it is possible to pass what otherwise would be a very controversial policy.

Jacobs and Shapiro argue that politicians who are set on pursuing their own policy preferences when these preferences do not conform to public preferences often try to shift public opinion from opposition to support through “crafted speech”.⁵⁹⁰ It is evident that the conservatives in England have done just that in pursuing privatization in education. As Thatcher mentioned in the quote above (Page 231), she was careful not to call vouchers by their name. Vouchers as a policy plan have not dropped off the conservative agenda but the controversial word ‘voucher’ has disappeared. Damian Green, the Conservative shadow Secretary of State for Education has proposed a new voucher program in the 2003 Conservative Conference, but has chosen to call vouchers “Better

⁵⁸⁹ McIntosh interview.

⁵⁹⁰ *Politicians don't Pander* (2000).

School Passports”.⁵⁹¹ Labour is also careful in not using the word “privatization” in relation to education. Instead, the Labour government refers to private management of schools and Local Education Authorities as examples of “Public Private Partnerships”.

In Massachusetts, the struggle to amend the “no aid” amendment during the 1980s and early 1990s was motivated, to a great extent, by the Catholic Church’s desire to receive state funding to support its schools either in the form of school vouchers or by other ways. The public campaign, however, was not centered on vouchers but on the demand to erase from the constitution an amendment based in religious prejudice.

Finally, in Texas one of the two main proponents of a voucher program in the Texas legislature, Chairman of the House Education Committee Kent Grusendorf, has recently discarded the use of the term “voucher”, though not the idea. Grusendorf did not explicitly call H.B. 2465 (2003), which he sponsored, a voucher bill. Instead he invented a new less loaded term for the voucher pilot program: “freedom scholarships”.⁵⁹²

Perceived public opposition to privatization is leading politicians, intent on pursuing privatization programs, to adopt new terminology that obfuscates the true nature of the policy. Be that as it may, the case studies explored in this work lend little support to the proposition that crafted speech does, in fact, lessen the opposition to privatization policies.

⁵⁹¹ Benedict Brogan, “Vouchers to buy Education of Parents’ Choice,” *The Daily Telegraph*, 7 October, 2003.

⁵⁹² “Vouchers threaten public education,” 2003.

Quasi- or partial privatization

Where full-blooded privatization is unfeasible, proponents may pursue policies that achieve partial or quasi-privatization. This strategy leaves policymakers some basis for presenting the delivery system as public and rejecting accusations of privatization. This is clearly the case of charter schools in the United States. Charter schools are considered public schools in all states that have them. Yet this is less true in some states than in others. In both Massachusetts and Texas, the laws governing charters create considerable room for private involvement. Most charter schools are not subject to the local school districts, they have almost full autonomy in designing a curriculum, their employment practices are not subject to public sector rules and agreements with the unions, and they could be managed on a for-profit basis by an Education Management Organization. If these schools are not fully private, they are not fully public either. Charter schools in states with permissive charter laws are at least partially a form of privatization despite their alleged public status. Proponents of charter schools are careful to present them as public schools. In a public hearing in the Massachusetts legislature's Education Committee, for example, almost all the charter supporters stressed that they were public schools while many of the supporters of a moratorium claimed they were a surreptitious form of privatization.⁵⁹³ The difference in public opinion support for vouchers and charter schools demonstrates how critical the adjective 'public' is for the charter movement's success.⁵⁹⁴

⁵⁹³ Massachusetts Public Education Committee, Hearing, 6 November, 2003.

⁵⁹⁴ According to the 34th and 35th Annual Phi Delta Kappa/ Gallup polls of the Public's attitudes toward the public schools, from 1996 to 2003 there has been a clear majority opposed to vouchers while the view of charter schools was much more balanced between supporters and opponents.

In England, the Grant Maintained Schools were a halfway house between public and private. Charitable Trusts could be the owners of the school property once a school opted out from its relationship with the LEA. On paper, these schools were a step down the road of privatization. In fact, private involvement in these schools was small.⁵⁹⁵ In 1993, however, the Conservative government took the next step on the road to privatization by establishing the Sponsored Grant Maintained Schools. The difference between the Grant Maintained Schools and the Sponsored schools was considerable. The Sponsored schools were private sectarian schools that could apply for Grant-Maintained status in order to receive government funding.⁵⁹⁶ Although this was a clear-cut case of privatization, the sponsored schools association with the Grant Maintained Schools, which were at best a halfway house between public and private, allowed such privatization to go relatively unnoticed. There is little doubt that quasi-privatization is a useful method for privatization because it allows policymakers to promote privatization while at the same time insisting on the public nature of the policy.

Facilitating factors

Prior existence of private providers

The prior existence of private sector providers of the service in question facilitates privatization in two ways. First, existing private providers are likely to create a lobby that would support privatization. In both the case of privatization of prisons in Texas and in England, it appears that the private provider lobby had some effect on the policymakers'

⁵⁹⁵ Walford (2000).

⁵⁹⁶ Walford (2000).

decision to privatize.⁵⁹⁷ Second, the existence of private providers signals to policymakers that the private sector does have the capacity to replace public provision.⁵⁹⁸ The converse is no less important. The lack of private sector providers could rule out privatization as an option. The private sector in Texas community mental health care, for instance, in contrast to the situation in Massachusetts and England, was very small prior to de-institutionalization. The size of the private sector, especially the nonprofit sector, could have signaled to the policymakers that the private sector was unable to provide community care and led them to prefer the establishment of a public community care system.⁵⁹⁹

Spike in demand

A spike in demand for a service could lead to the expansion of the service: a favorable circumstance for privatization by addition. The one case study in which the spike in demand undoubtedly played an important role was in the privatization of prisons in Texas. In fact, interviewees from Corrections Corporation of America (CCA), the leading international private prison firm, claimed that growth in demand is almost always a precondition for the expansion of the private prison industry.⁶⁰⁰

⁵⁹⁷ James et al. (1997); Nathan (2003); Cummins (2000).

⁵⁹⁸ Howard interview; Dukakis interview.

⁵⁹⁹ This is one of two main arguments I have heard from interviewees regarding the reasons why de-institutionalization in Texas did not bring in its wake privatization as it did in England and Massachusetts. The other explanation centered on the low per capita mental health expenditure in Texas that deterred private sector organizations.

⁶⁰⁰ Shanblum interview; Owen interview. These two interviewees also agreed that a tight budget that forces states to explore cost saving measures is equally important. In fact, Owen stated that Corrections Corporation of America singles out states for lobbying in which these two conditions are fulfilled.

Alternative explanations

In this sub-section, I would like to explore two alternative explanations for the privatization pattern across domains. First, I will address an explanation that is predicated on a view of education as a unique policy domain. Second, I will deal with a performance-based explanation of privatization rates.

Education: a unique domain?

The fact that this study relies primarily on qualitative case studies complicates efforts at generalizing its findings and conclusions. One case that seems to be particularly problematic is the generalization of the findings from one policy domain – education – to the entire subset of large policy domains. Apart from the fact that the study relies on just one example of a large policy domain, there appears to be a plausible alternative explanation for why privatization of delivery in education is far less extensive than in mental health care and incarceration; an explanation that is not based on the size of the policy domain.

This explanation asserts that there is something unique about the public's attachment to education. The majority of the general public have not only been served, or are being served, by the public school system, they are committed to a vision that requires basic education be public. The purpose of the education system, according to this argument, goes beyond the enhancement of individual knowledge and cognitive skills. The education system has an important role in the socialization of a new generation. Socialization is necessary if children are to become contributing members of society and

full participants in a polity that shares a sense of solidarity. Without a public education, many people believe, the task of instilling a sense of social solidarity and creating common values becomes well nigh impossible. For the general public this reasoning might not be explicit, but a general sense that public education is somehow necessary for promoting the coherence and purpose of society does exist. Therefore, it could be argued that the strong opposition to privatization in education has much more to do with the special role education plays, practical and symbolic, in our society than with the size of its stakeholder base.

This argument shares an important assumption with the domain-size explanation for privatization patterns. Both explanations stress that the majority of the public has a stake in the education system. This broad stake empowers the opposition to privatization. Where the arguments differ is in their characterization of the nature of the public's attachment to the policy domain. While the 'size' explanation assumes that the public will be attached to any service it relies upon heavily, the alternative explanation stresses that the public objects to privatization because it believes that only a public system is able to appropriately socialize the younger generation. How is it possible to tell which of the two explanations is better supported by the evidence?

One possibility is to see if education is, indeed, truly unique by comparing its privatization dynamics to those of a different large policy domain. The category of large service policy domains is small. The one other obvious constituent of this category is general healthcare. Comparing privatization of general healthcare in the United States to

education, however, is a nonstarter because general healthcare is primarily private, both in finance and in delivery. In England, however, the comparison is apt. General healthcare and education have both been dominated by public finance and delivery since the 1940s. If at all, more institutions remained private in the educational system than in the healthcare system.

The two large public domains are strikingly similar insofar as privatization is concerned. To begin with, the extent of privatization in the NHS has been very limited with most of the privatization occurring in the exact same form as privatization in education: privatization of ancillary services through PFI. The conservative party was obviously reluctant to privatize general healthcare because of the NHS's popularity and instead elected to establish a quasi-market within the public sector.⁶⁰¹ The Labour Party has crossed unions, as it did in the case of education, in its willingness to add private providers to the healthcare delivery mix.⁶⁰² Nevertheless, the main thrust of its health policy is the expansion of public sector services, not privatization.

British policymakers thus fear to privatize in both education and in general healthcare. It is of course possible that general healthcare is also in some way "unique". It is more likely, however, that both domains share a similar privatization dynamic because they share a common critical attribute: they are large domains that represent a crucial political constituency whose interests cannot be taken lightly by prudent politicians.

⁶⁰¹ For the definitive discussion of quasi-markets see Julian Le Grand, Will Bartlett, (eds.) *Quasi-Markets and Social Policy*, (London: Palgrave MacMillan, 1993).

⁶⁰² Patrick Wintour, "Labour Policy Paper Betrays NHS Past, Says Party Left," *The Guardian*, 7 February, 2002.

Relative performance

In the introduction, I argued that privatization of delivery is a highly political process that cannot be understood outside of the context of political struggle. This view, critics might argue, reflects the bias of a political scientist. Instead, let us assume that politics is not the major driving force behind privatization, but pragmatic managerial concerns regarding the performance of different government programs. Privatization, therefore, would not be applied according to political criteria, but according to policymakers' beliefs regarding its appropriateness as a tool for achieving results with respect to key policy dimensions such as cost, quality and access.

If we apply this reasoning to the case studies, we might conclude that privatization in mental health, and to a lesser extent incarceration, is considered by policymakers as more appropriate, in a managerial sense, than privatization in education. On the face of it, there might be some evidence to support this presumption. In the mental health domain, there were, indeed, policymakers that argued that privatization achieved important goals such as cost-containment. However, the managerial theory is seriously flawed. First, some privatization theorists argue that the policy domains that are the least appropriate for privatization are domains in which recipients are highly vulnerable and it is very difficult to develop and use performance measures for the service.⁶⁰³ Mental health clearly belongs to this category: recipients – for obvious reasons – are weak and it is notoriously difficult to assess the success of mental health treatment. Nevertheless, mental health has become a main target for privatization.

⁶⁰³ See *The Privatization Decision* (1989); Mark Bendick, "Privatizing the Delivery of Social Welfare Services," in Sheila B. Kamerman and Alfred J. Kahn (eds.), *Privatization and the Welfare State*, (Princeton: Princeton University Press, 1989).

Second, even if mental health care privatization is more cost-efficient than education privatization, this is clearly not the reason for why there is more privatization in mental health. The effectiveness of privatization in education is not evaluated with respect to its cost-effectiveness, but with respect to quality and choice. The managerial argument, therefore, for privatization becomes much more complicated. Instead of: “privatization in mental health is more cost-effective than privatization in education”, the argument becomes: “privatization in mental health is more cost-effective than privatization in education is quality-enhancing.” It is doubtful whether policymakers actually think along these complex lines.

There is, however, a less strict interpretation of the managerial explanation for privatization: an explanation that does not require policymakers to compare effectiveness or appropriateness across policy domains. According to this interpretation, what drives privatization is a perception of public delivery failure. This perception could be limited to policymakers or it could be a broader stakeholder’, and perhaps even public’, perception. According to this view, the reason for the higher levels of privatization in mental health and incarceration compared to education, have to do with the fact that they are more widely perceived as failures. To support this, there is no dearth of reports and policymaker statement to the effect that the mental health and incarceration systems are failing their recipients and failing the public. However, this is just as true for education. In both the United States and England, the performance of the public school system has

been under scrutiny, and under attack, for decades.⁶⁰⁴ While it might be true that a sense of public system failure may move some policymakers toward privatization, there is little to suggest that there is a greater sense of failure in the small domains than in the large one.

Radical institutional restructuring

A second major reason for the difference across domains is radical institutional restructuring. In recent years, the social sciences have rediscovered the significance of institutions for explaining political and economic trends. Specifically in the welfare state literature, different aspects of institutions have been used to understand the resilience of welfare state programs in changing times. Yet there are periods of radical institutional change. Below, I argue that these periods create a window of opportunity for privatization, even if privatization did not generate the initial impetus for institutional reform.

Radical institutional restructuring can come about for a host of different reasons. The literature dealing with the effects of institutions has just started to explore what these reasons might be as part of its discussion of critical junctures.⁶⁰⁵ In what follows, I do not attempt to offer an exhaustive list of possible reasons for radical institutional

⁶⁰⁴ In the United States, The National Commission on Excellence in Education published a report in 1983, "A Nation at Risk: The Imperative for Educational Reform," that articulated a widespread perception that American education was in decline.

⁶⁰⁵ See Kathleen Thelen, "Historical Institutionalism in Comparative Politics," *Annual Review of Political Science*, 2 (1999): 369-404. Paul Pierson, "Increasing Returns, Path Dependence, and the Study of Politics," *American Political Science Review*, Vol. 94, 2 (June, 2000): 251-267.

restructuring. Instead, I focus mainly on one factor that I found to be central to understanding the difference between the very extensive privatization in mental health care and the less extensive privatization in the other domains, especially incarceration: domain-specific philosophies.

Domain specific philosophies

In discussing the power of ideas in the context of privatization, most commentators focus on the importance of “macro-ideas” – either neo-liberal philosophies that underpin privatization policy or left-wing policies that view privatization as the market’s transgression of what is properly conceived as a purely public domain. What is overlooked is that domain-specific philosophies have a major impact on the trajectory of privatization. In the case of mental health care, the de-institutionalization movement became a dominant force that, with time, radically reshaped the institutional structure of the care system.

The effect of a domain specific philosophy is indirect. A dominant domain-specific philosophy creates the impetus for radical institutional restructuring. During the process of institutional restructuring, privatization can be introduced with relatively little resistance whether this was initially the intention of reformers or not. For the domain specific philosophy to have such an effect, however, two conditions must be met. First, the philosophy must dominate the field. Stakeholders – professionals, service recipients and advocates – should, by in large, embrace the philosophy. If a philosophy is just one out of several competing ideational currents in the domain, prospects are slim that it

would bring about institutional restructuring. Second, there must be at hand policymaker entrepreneurs who endorse a privatization agenda, to take advantage of the window of opportunity created by radical institutional restructuring. Privatization does not occur automatically once the opportunity presents itself. Policymakers must propose it and carry it through.

Massachusetts mental health

This was the case for mental health care in both Massachusetts and England. In Massachusetts, starting in the mid-1970s, the State began closing down mental health hospitals. This development was guided by the philosophy of the de-institutionalization movement that called for moving the mentally ill back to the community in order to reintegrate them into society. From a population of close to 23,000 patients at the end of the 1950s, the state in-patient mentally ill population decreased to around 6,000 by 1990.⁶⁰⁶ Many of these patients were placed in community settings. Community settings consisted of publicly run Community Mental Health Centers, clinics, residential homes and other housing arrangements. The latter two types of arrangements were usually private. As a result, the share of patients treated in the community grew and with it the share of publicly funded patients treated by private sector organizations.⁶⁰⁷

In theory, de-institutionalization (in the 1970s and 1980s) could have involved moving patients from state hospitals to state-provided community settings. The government, however, was eager to take advantage of nonprofit resources and the greater institutional

⁶⁰⁶ Hogarty (1996): 3; "Actions for Quality Care," 1991.

⁶⁰⁷ Callahan Interview.

flexibility that the nonprofit sector offered.⁶⁰⁸ Weld's closing of the state hospitals in the 1990s was different. Weld was ideologically committed to privatization and a major attraction of de-institutionalization was that it created an opportunity to move mental health care into the private sector.⁶⁰⁹ While several organizations in the mental health sector were opposed to the closing of the hospitals fearing privatization, others welcomed the reforms because they furthered de-institutionalization. In the domain of mental health care there is a near consensus in favor of de-institutionalization; a consensus that has provided the impetus for radical institutional restructuring. Privatization, in contrast to de-institutionalization, is controversial yet its practical linkage to de-institutionalization in Massachusetts has weakened potential opposition.

English mental health

In England, de-institutionalization only began in earnest in the 1980s and, as in Massachusetts, jump-started privatization of delivery. What triggered the dual process was a change in the rules governing social security payments for board and lodging expenses.⁶¹⁰ In 1980, the government passed a statute under which the expenses of lodgers in private residential homes and nursing homes would be fully covered. The government did not cap the amount designated for this purpose, and the unexpected result was an incredible growth in social security payments to lodgers. In 1979, only £10 million were dedicated to reimbursement of residential care costs. By 1993, the sum had ballooned to £2.4 billion.⁶¹¹ Local authorities and hospitals both recognized the uncapped

⁶⁰⁸ Rosenberg interview; Bachman (1994), 138-142.

⁶⁰⁹ Littlehale interview; Wilson interview.

⁶¹⁰ Lewis and Glennerster (1996), Chapter 1.

⁶¹¹ Darton, (1998).

sum as an opportunity to shift costs from their budgets to social security. By moving clients from local authority homes or hospitals to private residential homes, they could achieve considerable cost savings. Most of this budget was not dedicated to the care of the mentally ill. Even so, there was a pronounced shift towards more private residential care for the mentally ill.⁶¹²

Thatcher's government was aware of the cost explosion and in 1989 moved to rein it in. Its response was the National Health Service and Community Care Act of 1990. The Act was primarily driven by the government's goal to contain costs, but it also had an important secondary goal as well: to develop the private market in community care.⁶¹³ The Act replaced the social security funding with a block budget for care in the community to be managed by the Local Authority Social Service Departments. The last thing Thatcher was willing to allow, however, was growth of the public sector, especially local authorities. Her government resolved this problem by ruling that 85% of the transitional grant to local authorities, which lasted for three years, would have to be spent on private sector provision. This way the local authorities would administer services but they would not provide them directly and, instead, it would be the private sector that would grow.⁶¹⁴ The outcome in the mental health domain was twofold. First, the rate of de-institutionalization increased considerably. Martin Knapp found that the proportion of psychiatric beds provided in hospital settings fell from 91% in 1993 – the year that the Act was first implemented – to less than 44% in 1996.⁶¹⁵ Second, the proportion of

⁶¹² Lewis and Glennerster (1996).

⁶¹³ Lewis and Glennerster (1996).

⁶¹⁴ Lewis and Glennerster (1996).

⁶¹⁵ "Private, Voluntary or Public?" (1999).

private delivery – nonprofit and for-profit – rose considerably during this period. The private sector now dominates mental health residential care and this trend is continuing.⁶¹⁶

The new government policy was supported by many – probably even a majority – of advocacy groups, patients and professionals – because it brought about de-institutionalization. Privatization was viewed by many as a byproduct of de-institutionalization, despite the fact that without the 85% rule it is doubtful whether the extent of private delivery would have been anywhere near what it has become. The introduction of widely popular de-institutionalization created an opportunity for concurrent privatization without too much fuss.

Texas mental health

In Texas, in contrast to the cases of Massachusetts and England, de-institutionalization did not bring about concurrent privatization. While de-institutionalization, as a philosophy, did dominate the mental health field in Texas, as it did in England and Massachusetts, privatization did not come in its wake once it was implemented throughout the 1970s, 1980s and 1990s. What clearly was lacking at the time was not the institutional window of opportunity created by radical restructuring. Indeed, the hospital census was drastically reduced in the 1970s and the growth of community mental health care accelerated in the 1980s and 1990s.⁶¹⁷ Rather, the missing ingredient was

⁶¹⁶ Department of Health, “Community Care Statistical Bulletins,” 1997-2002.

⁶¹⁷ The state hospital census declined from 14,921 in 1964, to 8,000 by 1975, and to 2,394 in 2001 (The Handbook of Texas Online, “Mental Health”; TXDMHMR, “Strategic Plan”). In 1986, only 33% of the department’s budget was dedicated to community mental health care. By 2002, however, the share jumped

policymakers interested in pursuing privatization, especially during the formative years of de-institutionalization. The possible reason(s) for this lack of enthusiasm regarding privatization on behalf of policymakers was discussed in a previous section. The result was that the de-institutionalization- induced window of opportunity was exploited by privatizers to a lesser extent than it was in either Massachusetts or England. Nevertheless, the institutional opportunity provided by de-institutionalization in Texas has not been completely 'wasted'. Privatization is still more extensive in mental health care than in other domains and it is set to expand much further in the near future.

How restructuring facilitates privatization

The influence of a domain-specific philosophy, a philosophy that has little to do with privatization, has ultimately led the way to privatization by stimulating radical institutional restructuring in mental health. But why is it that radical institutional restructuring facilitates privatization? The short answer is that radical institutional restructuring weakens the opposition to privatization, for three reasons.

First, institutional restructuring weakens the power base of certain stakeholders that would be inclined to oppose privatization. First and foremost, this is true of workers in the traditional public institutions. In the case of mental health care, de-institutionalization moved workers from mental health asylums to community settings. The transfer to a community care environment entailed the dispersion of the concentrated mass of workers in the asylums to far smaller and more numerous community care units. The thinning out

to over 61% (Bachman (1996); "TXDMHMR Strategic Plan",). Most of this change occurred in the late 1980s.

of the work force led to the dilution of the workers' political power. With less centers of concentrated employment, the economic and political significance of mental health workers declined.

Second, radical institutional restructuring has many facets and is comprised of multiple institutional reforms. This implies that privatization is not the only reform on the agenda and potential opponents of privatization might be busy opposing other reforms as well. This appears to be a major reason for why H.B. 2292's (2003) two privatization amendments met with only minor resistance. Opponents of privatization faced a bill that called for radical reform on many other fronts as well. The bill proposed to change eligibility criteria for recipients narrowing the field to just three categories of mental health patients, do away with the state's department of mental health and mental retardation, and perhaps also change the clinical focus of mental health care in a way that would rely on the disease management model.⁶¹⁸ Opponents opposed the reorganization of the state system, the changes in eligibility criteria and numerous changes in financial arrangements. The privatization amendments were introduced relatively late in the legislative process, the opposition to H.B. 2292 was already up in arms fighting a host of other issues, so privatization was left relatively untouched.⁶¹⁹

Third, in some instances, other developments in restructuring draw so much attention that privatization goes by almost unnoticed. This scenario applies to the privatization of mental health in England. The rapid advent of de-institutionalization attracted almost all

⁶¹⁸ Lovelace interview.

⁶¹⁹ Shapleigh interview; Gantt interview.

professional, political and public attention. Consequently, privatization not only became a minor issue on the agenda, it was not on the public agenda at all.⁶²⁰ The majority of stakeholders and politicians largely agreed with the de-institutionalization policy⁶²¹ and the government's parallel privatization policy managed to slip through unobserved under the cover of de-institutionalization.⁶²²

Radical institutional restructuring in education and incarceration

Thus, radical restructuring by weakening the opposition organization, packing the opposition's agenda or by obscuring privatization has facilitated privatization in mental health care. Why has this not been the case in the two other policy domains explored in this study? There are two responses to this question. First, to some extent at least, restructuring did, in fact, open the door to privatization. In the case of Massachusetts' schools, for example, the Education Reform Act of 1993 did bring about significant reform in the state's educational system (although the state and district administration of schools and internal organization of schools did not change much), the introduction of charter schools withstanding. Unquestionably, a major factor in the legislature's ability to stand up to the opposition to charter schools was the fact that the opposition had numerous other issues on the agenda, both items they strongly backed and items they opposed, so they had to pick their fights and compromise.⁶²³ While restructuring, in this

⁶²⁰ Bowis interview.

⁶²¹ Prior interview; Lwaton-Smith and Hitchon interview.

⁶²² Most Labour criticism of the 1990 Community Care Act was not leveled at the de-institutionalization per se but at the conservative government's timetable for implementation. Criticism of privatization was rare indeed. See: Hansard, House of Commons Debates for 18 July, 1990, especially Columns 1002-1003 for the Secretary of State for Health, Kenneth Clarke's response to Robin Cook (Labour – Livingston). For a rare critique of privatization see Columns 1045-1047 for John McAllion's (Labour – Dundee, East) comments during the debate.

⁶²³ Johnson interview; Wilson interview; Roosevelt interview.

case, did not fling the door wide open for privatization, it certainly allowed privatization a foot in the door.

Second, neither the education policy domain nor incarceration experienced the effect of a dominant domain-specific philosophy that could bring about radical institutional restructuring as was the case of de-institutionalization in mental health care. In education, privatizers, in contrast to mental health care, did not have the luxury of piggybacking on a dominant movement calling for institutional restructuring for reasons unrelated to privatization. There is no one professional philosophy in education that has managed to create a consensus for institutional change. A possible counterpart of the de-institutionalization movement in education is the de-schooling movement whose philosophy was propounded in the work of Ivan Illich. Yet, de-schooling did not attract a broad following in either England or the United States. Privatization in American and English education, therefore, takes place in a stable institutional environment, something that makes progress very difficult.

In the field of incarceration, the main ideational development to change the domain did not involve a dominant domain specific philosophy but demands emanating from the general public for a tougher stance on crime. Legislatures and courts responded with increased penalties for crime and numerous states passed mandatory sentencing laws. All this (and the coming to age of the baby boom generation) contributed to the increase in the number of inmates in American prisons. From 1980 to 1988, the number of prison

inmates doubled from 300,000 to 600,000.⁶²⁴ Developments in British incarceration mirrored those in the United States. One of the main planks of Margaret Thatcher's platform was "law and order" – a message that resonated favorably with the public. The implementation of this vague general philosophy drove up the number of inmates in British prisons during the 1980s.⁶²⁵ The "tough on crime" stance and the subsequent dramatic increase in the inmate census, however, did not bring about any major institutional restructuring. In fact, the opposite might be true. Relatively new developments in the incarceration system that stressed rehabilitation and training were de-emphasized in favor of a more traditional approach of containment and deterrence.⁶²⁶ Thus, ideational developments that affected the domain of incarceration, in the 1980s, probably reinforced the traditional system, not the other way around.⁶²⁷

The study of factors that facilitate privatization through the triggering of radical institutional restructuring should not be restricted to domain specific philosophies alone. Numerous other restructuring-stimulating factors are plausibly having an indirect effect on privatization in cases not explored in this study. In order to investigate these factors, however, this research would have to be extended to new case studies, something that is beyond the scope of this dissertation. I hope that this work will at least show the way for future study of this important topic.

⁶²⁴ Donahue (1989), 152-153.

⁶²⁵ James et al. (1997), 38-39.

⁶²⁶ James et al. (1997), 5.

⁶²⁷ This does not imply that private prisons are incompatible with the traditional system or with the institutionalization of the "tough on crime" message. All that is argued here is that privatization could not benefit from institutional instability in the current public system in the prison system as it did in mental health.

An exceptional case: Massachusetts incarceration

One case study stands out as an exception among the nine explored: incarceration in Massachusetts. This is the single case study in which no substantial privatization took place.⁶²⁸ In the other two incarceration cases, privatization did take place and was at significantly higher levels than privatization in education, although lower than in mental health care services. Furthermore, in both other domains (and numerous others), privatization policies were implemented in Massachusetts. Why is this case different?⁶²⁹

Answering this question is no easy task because there is very little information available on privatization attempts in Massachusetts' incarceration. This is not surprising given the fact that privatization was a non-event. The government records on the privatization efforts in this field are very limited, including no more than one mention in a 1985 Act and several proposed bills with no record of debates or public statements on the issue. Nevertheless, based on an admittedly small number of interviews (seven) and a few government documents and newspaper articles, I conclude that two factors have combined to prevent private prisons from opening in Massachusetts.

First, one important facilitating factor appeared to have been absent in Massachusetts: existing private sector providers or at least a strong private interest in establishing a

⁶²⁸ The accuracy of this statement depends on one's definition of 'substantial privatization'. While not one adult private incarceration facility was established, the state did allow for the establishment of private halfway houses and juvenile facilities. Furthermore, during the 1980s and 1990s, the state contracted out for a host of ancillary services in adult correctional facilities.

⁶²⁹ How different is Massachusetts from other states in the country? Massachusetts, in fact, belongs to a large minority (20 states in 1999) that, to date, have yet to allow a private prison to open on their soil. This number, however, is gradually diminishing (Price (2002), Appendices A & B).

private incarceration facility in Massachusetts. Massachusetts had no locally-based firms that showed interest in any form of prison privatization.⁶³⁰ The large national private incarceration firms, such as Wackenhut or CCA, showed little interest in Massachusetts.⁶³¹ The relatively low interest of the private industry in Massachusetts incarceration is explained by the small size of the market (Massachusetts ranked only 31st in 2002 in the size of its inmate population)⁶³² and the relative strength of its public prison related unions.⁶³³ The private industries probably concluded that the prize was not worth the cost of the battle.

The second reason for the absence of privatization in Massachusetts' incarceration is a frustratingly unpredictable factor: leader personality and convictions. A number of proposals for privatization were put forth as bills in the legislature from the mid-1980s to the early 1990s. What these proposals lacked was the support of the executive. Governor Michael Dukakis opposed a prison privatization bill passed by the legislature in 1986 (Section 25, Chapter 799, 1985) because he was concerned about the possible public safety effects of private prison failure and he was also skeptical regarding the state's ability to hold private prisons accountable.⁶³⁴ Governor William Weld appeared to be the ideal person for pushing through privatization in prisons. After all, he was the main mover in mental health privatization during the 1990s (and several other fields) and he was ideologically committed to privatization. Furthermore, when Weld came into office

⁶³⁰ Phone Interview with Thomas Rapone, Former Secretary of Safety and Corrections Commissioner (Weld Administration), 9 April, 2004.

⁶³¹ Fair interview; Constanza interview.

⁶³² "Prisoners in 2002," 2003.

⁶³³ Owen interview.

⁶³⁴ Dukakis interview; "Legislative Research Bureau report on Private Sector Management of Jails and Prisons," 1986.

the prison overcrowding rate was at around 168%⁶³⁵ and the state was in the midst of a severe fiscal crisis – seemingly optimal conditions for prison privatization. Weld, however, did not push for prison privatization. According to Steve Wilson, Head of Weld’s Strategic Policy Team, the governor was probably ideologically averse, as Wilson himself was, to the idea of privatizing law enforcement functions despite his general support for privatization. Another explanation for Weld’s reluctance to push prison privatization, proposed by a prominent union member, is that Weld had a highly unusual friendly relationship with the main Massachusetts prison guard union: the Massachusetts Correction Officers Union. This union was one of only two unions to support Weld in the 1990 gubernatorial elections and it supported him again in 1994.⁶³⁶ In any case, neither governor supported prison privatization, which doomed prison privatization in Massachusetts. Other individuals in the same situation might have chosen to support prison privatization and as a result Massachusetts would have had private prisons.

In 1993, the Massachusetts legislature passed the so-called Pacheco law that created significant obstacles in the path of prison privatization and other types of privatization. Furthermore, the size of the Massachusetts prison population has recently been declining greatly reducing the possibility for privatization by addition. The story of prison privatization, or lack thereof, in Massachusetts highlights the importance of not just private industry interest in privatization but also the contingency of individual agency to privatization’s success.

⁶³⁵ Rapone interview.

⁶³⁶ Dawe interview.

Conclusion

In contrast to the analysis of privatization from a political system-centered perspective, analysis that is based on a comparison of policy domains produces a number of important insights regarding privatization extent and dynamics. First, it is harder to privatize delivery in large service domains than in small ones because of large domain stakeholders' greater political clout. This conclusion may not seem all that surprising, but it has gone largely overlooked and unexplored in previous discussions of privatization. I argue that the size of policy domains is also associated with two other important and related aspects of privatization dynamics: the motivation for privatization, or at least the public' justification for it, and the fiscal conditions for privatization. In small domains, cost containment is the leading motivation (or justification) for privatization while in large domains policymakers steer clear of this type of justification. One implication of this is that in large domains, a tight or contracting budget creates little incentive for privatization – cost containment not constituting a legitimate justification for it – and actually creates an unfavorable environment for privatization by strengthening potential opposition. In small domains, by contrast, a budget contraction stimulates interest in privatization as a means of cost containment. Privatization in small domains, however, also occurs in better economic times because policymakers, under favorable budget conditions, can pursue the less controversial strategy of privatization by addition instead of privatization by substitution, which is the main option in hard times.

Several strategies and factors occasionally play important roles in facilitating privatization. In large domains, privatization proceeds, if at all, in a crab-like fashion. Privatization is hardly ever a straightforward affair. It is often dressed in intentionally misleading language and hybrid privatization efforts, which I call “quasi-privatization”, are common because of the possibility of stressing their public aspects and downplaying their private ones. Privatization in large domains is also promoted by adopting a strategy in which peripheral services are the primary targets of privatization.

In small policy domains, opportunities for cost containment – whether through decreased private sector labor costs or intra-government cost shifting – often stimulate privatization efforts. The existence of a private network of providers is a second facilitating factor in small domains. The existence of such a network is both the basis for a private lobby and signals to policymakers that privatization would probably not fall flat due to lack of capacity on the supply side. Finally, a spike in demand for a service is a fortuitous condition for privatization because it creates the conditions for privatization by addition, which generates less of an opposition than privatization through substitution.

Apart from the size of the policy domain, another domain-related attribute is central to understanding privatization of delivery: institutional stability. Radical institutional restructuring, often brought about by the ideational force of a new dominant domain-specific philosophy, creates a window of opportunity for privatization even if this is not what reformers in the domain initially envisioned. Of course, not all windows of opportunity are exploited, but when they are, the subsequent changes could be dramatic.

Chapter 5: Privatization Dynamics

In a conversation with a well-known social policy scholar about privatization a couple of years ago, the scholar mused on his own failed past predictions regarding privatization. Fifteen years ago, he had thought that prison privatization was not a politically acceptable policy in England. He assumed that the majority of the public would find a situation in which vulnerable inmates would be at the mercy of for-profit wardens unacceptable. The scholar was proven wrong: private prisons were established in the early 1990s. The scholar argued that the reason his prediction missed so badly had to do with the dynamic of privatization. Previous privatization prepares the public and their representatives for further steps. Privatization of prisons would have been unthinkable before the privatization of utilities in the 1980s, as the privatization in education today would not have occurred without the prior privatization of prisons.

This chapter is about these types of changes. The way that privatization evolves over time is often propelled by individuals and organizations' prior experience with privatization. While the previous two chapters compared privatization across different political systems or across policy domains, this chapter examines privatization over time.

The study of privatization of delivery along the temporal dimension has proven to be more challenging than across the two other dimensions – political systems and policy domains – for one reason. Privatization, in almost all cases, is a relatively new phenomenon. Thus, the time frame available for research is too short for arriving at any

firm conclusions. As a result, this chapter is of a more speculative nature than the previous two chapters and the conclusions are of a more provisional nature.

In what follows, I explore only one of two types of variables that are related to privatization dynamics: endogenous variables. By endogenous variables I mean variables that have an impact on the privatization trajectory, and are themselves affected by prior privatization experience. These are variables that operate within the causal mechanisms of a feedback loop. Exogenous variables, in contrast, are not influenced by prior privatization. Yet changes in exogenous variables also bring about changes in the trajectory of privatization. Several of the variables discussed in the previous chapters are exogenous variables (e.g., the ideological outlook of policymakers, economic conditions, the demand for a service) in the sense that their values/direction change over time in a single program, and these fluctuations could impact the level of privatization. However, since I have discussed the impact of these variables in some detail in the previous chapters, there is little reason to do so again in this chapter.

The study of endogenous variables is the study of the privatization of delivery feedback loop. It is useful to break down feedback loop analysis into two parts. First, the analysis should explore the effects of the evaluation of past privatization on future privatization. Second, privatization has a direct impact on individuals and organizations that could affect its future trajectory. I will deal with each aspect of the feedback loop in turn.⁶³⁷

⁶³⁷ Evidently, these are not two mutually exclusive aspects of the feedback loop. Breaking down the analysis of the feedback loop into categories has the advantage of using two different perspectives. The 'evaluation' perspective focuses on the effects of specific kinds of information, while the 'actor' perspective concentrates on the recipients of the new inputs.

Evaluation of the privatization experience

As is true of most policies, the trajectory of privatization is influenced by prior privatization experiences. Although there is certainly a possibility that privatizing policymakers would pursue their policy regardless of outcomes, perhaps for ideological reasons, it is more reasonable to expect that the outcomes of privatization at time 't' would affect policymakers' decisions regarding privatization at time 't'+1. The privatization experience could influence current decisions by altering the interactions of relevant actors. If the privatization experience is to have an effect on future decisions, then it must be evaluated. Policy evaluation could take many forms. Some policymakers might decide to continue or radically reform an existing privatization policy on the strength of a few anecdotes that shed a positive or negative light on the policy. Others may need to be informed by an exhaustive expert study of the privatization experience in order to act. In the following two subsections, I discuss two out of several types of policy evaluations that feed into the policy feedback loop: formal policy learning and media reports.⁶³⁸

Formal policy learning

Much of what is considered policy learning is informal. Policymakers assess the merits of an implemented policy without reference to any clear measures of program performance

⁶³⁸ One reason that I focus exclusively on these two types of evaluations is practical: in contrast to informal policy learning (e.g., policymakers act on an anecdote) there is a clear event(s) that triggers, or fails to trigger, a change in policy. This makes process tracing easier and more reliable than cases in which one has to interrogate policymakers regarding their basis for re-evaluation (and take their word for it). Another reason for the focus on these two types of evaluation is that there are good reasons to expect them to be especially important in the policy process. The role of the media in the policy world is the subject of an entire sub-field in political science. The importance of formal policy learning has been debated in the literature dedicated to organizational learning.

or a detailed study of the program. The policymaker decides to stay the course or change direction on the basis of relevant information that was not gathered in any systematic way. In contrast, there are decisions that are made regarding policy that are based on systematic research and data gathering. Both types of policy learning are evident in privatization policy. This section focuses on the latter: formal policy learning.

An extensive literature, called organizational learning, deals with formal policy learning. This literature asks under what conditions are organizations able to systematically learn from past experience and correct present policy accordingly?⁶³⁹ This literature rejects the simplistic notion of a policy process in which rational policymakers' main motivation and guidance for policy revision is systematically gathered and evaluated evidence. However, the possibility of evidence-based policy evaluation is recognized as at least one important basis for policy reform in mature bureaucratic systems.⁶⁴⁰ The possibility of bureaucratic organizational learning, however, has been challenged in a number of works. Maurice Kogan, for example, has argued that the main use of research evidence is to legitimize a pre-existing political agenda, not to re-evaluate policy in a rational manner.⁶⁴¹ Lance Fusarelli, in an evaluation of the role of organizational learning in privatization in Texas education (one of the case studies in this dissertation) concluded that:

⁶³⁹ Chris Argyris, *Reasoning, Learning and Action: Individual and Organizational*, (San Francisco: Jossey-Bass, 1982).

⁶⁴⁰ Frans L. Leeuw and Richard C. Sonnichsen, "Evaluation and Organizational Learning: International Perspectives," in Frans L. Leeuw, Ray C. Rist and Richard C. Sonnichsen (eds.) *Can Governments Learn? Comparative Perspectives on Evaluation and Organizational Learning*, (London: Transaction Publishers, 1993), 1-13.

⁶⁴¹ Maurice Kogan, "The impact of Research on Policy," in Frank Coffield (ed.) *Speaking Truth to Power: Research and Policy in Lifelong Learning*, (Bristol: Polity Press, 1999).

“The findings question, although they do not exclude, the likelihood that organizational learning processes were at work in the debates over charter schools and vouchers. In the debate over vouchers, research appears to have been primarily used as policy advocacy. Legislative testimony, interview data, and other documentary sources suggest that although the legislature appears to have put in place the conditions for organizational learning to occur (via evaluation of the reforms), the lack of attention given these processes and subsequent efforts, in the case of charter schools, to expand the programs absent such evaluation, leads to the conclusion that organizational learning cannot account for the decision to adopt and expand charter schools while failing to adopt vouchers.”⁶⁴²

Works such as Kogan’s and Fusarelli’s caution us not to confuse political use of research with organizational learning. Do these arguments apply to the case studies investigated in this dissertation? A serious methodological problem exists that makes it difficult to assess the merits of organizational learning. How is it possible to know whether policymakers sincerely reevaluate policy or merely exploit it to buttress their pre-existing views? After all, in both cases it is likely that policymakers would argue that their decisions are predicated on the research. I have no clear answer to this problem, but I do believe that policymakers’ claims of sincere re-evaluation of policy should be taken more seriously in cases in which a re-direction of policy follows the evaluation than in cases in which no significant policy changes occur. My case studies include several such examples. I shall begin with the very case that led Fusarelli to the conclusion that organizational learning is of little significance: privatization in Texas education.

Texas schools

Fusarelli based his negative assessment of organizational learning in Texas education mainly on the fact that the expansion of the charter school program, which was understood by many to be a pilot program, was undertaken before any research was

⁶⁴² Fusarelli (1998), 73.

produced by the state regarding the effectiveness of charter schools.⁶⁴³ There is little doubt that former governor Bush did not view the first twenty charter schools as an experiment but as a first wave to be followed by many more.⁶⁴⁴ This view, however, was not shared by all the political actors who had a say in the privatization process. The quick expansion of the charter school movement was a reason for concern for several policymakers who had supported the legislation that authorized the establishment of the first twenty charter schools in 1995. In December 1999, Speaker of the House, Pete Laney, assigned the House's Public Education Committee the task of studying charter schools. The committee report, published in 2000, proposed numerous reforms that were later incorporated into H.B. 6 – a charter school reform bill passed in 2001.

Speaker Laney was never a big fan of charter schools, so skeptics could view the report as just one more example of how research is used to promote a pre-existing policy preference – in this case limitations on charter school growth and autonomy. The report and the ensuing reforms, however, received the support of individuals who were, in general, supportive of charter schools. S.B. 1 in 1995, which authorized the first twenty charter schools, and H.B. 318 in 1997, which raised the charter school cap considerably, received broad bi-partisan support. Nevertheless, only four years after the legislature approved raising the cap in charter schools, it passed by wide margins H.B. 6, a bill that imposed a strict cap on the schools. Many legislators were clearly disturbed by what the 2000 committee report revealed.⁶⁴⁵ Even Governor Perry's education commissioner during this period, Jim Nelson, who strongly supported charter schools, found the report

⁶⁴³ Fusarelli (1998), 57-67.

⁶⁴⁴ "Bush pushes hard for charter schools," 1996.

⁶⁴⁵ Dunnam interview.

compelling. Nelson, as a result, supported H.B. 6, although he was careful not to do so publicly because of Governor Perry's opposition to the bill.⁶⁴⁶

Another example of how research has influenced the course of privatization in Texas is the closing of Edison schools in Dallas. The Dallas School Board approved a five-year contract with Edison, a for-profit Education Management Organization, for the management of seven schools starting with the 2000/2001 school year. A Dallas Independent School District report studied the performance of the Edison schools at the end of the 2001/2002 school year and found that comparable public school students consistently outperformed Edison school students.⁶⁴⁷ The Dallas schools Superintendent, Mike Moses, decided to terminate the contract with Edison and gave Edison one year's notice.⁶⁴⁸ It might be argued that evaluation on the basis of only two years of performance was unfair to the private provider. There is little doubt, however, that had the report been positive, Edison would have continued its work in Dallas.

Massachusetts schools

The first charter schools were opened in Massachusetts in September 1995. Less than two years later the legislature voted to raise the cap on the number of charter schools from 25 to 37. The bill passed both houses by a large majority. The expansion in the number of charter schools was not supported by any official study that demonstrated their

⁶⁴⁶ Nelson interview.

⁶⁴⁷ "Achievement Performance Report: Dallas-Edison Partnership Schools 2001-02".

⁶⁴⁸ Moses interview.

success.⁶⁴⁹ The cap on the number of schools was raised once again in 1999. As was the case in 1997, this change was not driven by the findings of a systematic evaluation of charter school performance. Nevertheless, supporters of the charter schools did argue that the schools were an academic success. This claim, however, was not based on research, but on the long waiting lists for charter schools, allegedly demonstrating that parents were satisfied with their performance.⁶⁵⁰

The proposals for a moratorium on charter schools, introduced as bills in the 2003 and 2004 legislative sessions, were based far more on financial concerns than on an academic critique of charter school performance.⁶⁵¹ The Massachusetts Department of Education publishes annual reports for each and every charter school in the state. There is no one report, however, that aggregates this information and compares charter school performance to regular public school performance. It appears that in the case of charter schools in Massachusetts, legislation, either in support or in opposition to charter schools, has not been directly informed by relevant research.

English schools

Labour came to power in 1997 with many ideas about how to reform government that were part of their more general mission to ‘modernize’ government. The new government stated that their policy commitment would be to “what works”. To determine what works

⁶⁴⁹ An initial study of charter schools was issued by the Department of Education in June 1997, when the vote in the legislature was taking place (Massachusetts Department of Education, “1997 Test Results from Massachusetts Charter Schools: A Preliminary Study,” June 1997, <http://www.doe.mass.edu/charter/reports/1997/>). The initial evaluation was cautiously positive regarding charter school performance, but it did not inform the legislative deliberations on the issue.

⁶⁵⁰ By 2000, the number of charter school students was 12,700 and there were 9,400 students on waiting lists (“Easy Call,” 2000).

⁶⁵¹ Blumer interview; Education Committee public hearing.

the government decided to increase research and evaluation in order to generate the necessary evidence regarding the effectiveness of existing programs. As part of this initiative, the government created the new Centre for Management and Policy Studies in the Cabinet Office as the main locus for evaluative research.⁶⁵²

How did these developments affect the trajectory of privatization in English education? The most important component of Labour's privatization initiative in education was PFI. In January 2003, the Audit Commission published a critical report of school PFI in which it argued: "Traditional funding delivered, on average, better school buildings than the early Private Finance Initiative schools."⁶⁵³ The report, however, did not call for a termination of PFI in schools. Rather, it suggested that the government explore other procurement alternatives along side PFI. A month later, The National Audit Office published a report on PFI that was far more positive than the Audit Commission report in which it was concluded that there was support for the hypothesis that PFI delivers price certainty, timely delivery and good quality assets.⁶⁵⁴ The two reports appeared to contradict each other regarding the effectiveness of PFI. The government, as could be expected, stressed far more the findings of the complimentary report than those of the critical report. Nevertheless, the government did set out to expand the use of alternatives to PFI as was suggested in the Audit Commission report. Most notably, PFI now excludes

⁶⁵² Ian Sanderson, "Evaluation, Policy Learning and Evidence-Based Policy Making," *Public Administration*, Vol. 80, 1 (2002): 1-22.

⁶⁵³ The Audit Commission, "PFI in Schools," January 2003, <http://www.audit-commission.gov.uk/reports/accessible.asp?ProdID=D7701D4F-C130-4BA6-B10D-6D0644BDAA98>,

⁶⁵⁴ National Audit Office, "PFI: Construction Performance," 5 February, 2003.

schemes valued at less than £20 million.⁶⁵⁵ Whether these changes were brought about by the Audit Commission's report or something else is an open question.

Texas mental health

Privatization in Texas mental health began in 1996 with three pilot programs in which the authority and provider roles in Community Mental Health and Mental Retardation Centers were separated creating new room for private providers. The success of the pilot programs was evaluated in a University of Texas report, but not a government report. In any case, the privatization aspect of the program was not assessed.⁶⁵⁶

In 2000, the Texas Department of Mental Health and Mental Retardation established the experimental NorthSTAR model in seven counties in the North of Texas. In 2003, The Lyndon B. Johnson School of Public Affairs prepared a report evaluating the performance of NorthSTAR for the department.⁶⁵⁷ The report claimed that NorthSTAR was a success and that it made better use of existing resources than did the previous system. The use of private providers was considered by the report as one of the main advantages of NorthSTAR. It is difficult, however, to say at this early point, what is the report's impact on mental health privatization in Texas. There is little indication that the NorthSTAR model is about to be replicated elsewhere in the near future. At the moment, other reforms in the mental health system are much higher on the policy agenda.

⁶⁵⁵ David Walker, "The Private Finance Initiative doesn't excite controversy like it once did. But does that mean it is a success?" *The Guardian*, 12 May, 2004.

⁶⁵⁶ LBJ School of Public Affairs, The University of Texas, "Community Mental Health Centers Under Managed Care: Authority or Provider?" Policy Research Project Report No. 128 (Austin, Texas: 1998).

⁶⁵⁷ "NorthSTAR," 2003.

Massachusetts mental health

Massachusetts has not studied the effect of privatization in mental health on the delivery of services with respect to quality, access or price. The consolidation of mental health hospitals, and the transfer of patients to private facilities in the early 1990s, was studied by the Department of Mental Health in a series of publications.⁶⁵⁸ These reports followed the progress of patients released from the asylums and found it to be generally good, but they did not specifically evaluate the quality of the private institutions.

The introduction of an integrated managed care system managed by a for-profit behavioral health organization received somewhat more scrutiny. The department of mental health viewed the initiative as a success. In a monograph from 1999, the Department argued that the implementation of the program had brought about significant cost savings, approximately \$19 million per year.⁶⁵⁹ The first managed care company to run the system, Mental Health Management of America, gathered extensive data regarding program effectiveness, but ultimately the data was not used for any substantial analysis that could inform future policy.⁶⁶⁰

English mental health

Although private delivery has made substantial inroads in the English mental health system, there is no official privatization policy in mental health and the very extent of privatization is not widely recognized. Under such circumstances, it is of little surprise

⁶⁵⁸ Commonwealth of Massachusetts, Department of Mental Health, "Developing a System of Public Managed Care: Second Progress Report," July 1993.

⁶⁵⁹ Department of Mental Health, "The Medicaid/Mental Health Initiative," January 1999.

<http://www.mass.gov/dmh/monograph/medicaid.html>.

⁶⁶⁰ Counihan interview.

that there has been no government-sponsored study related to the effects of privatization on any dimension of mental health.

Texas incarceration

In Texas in the early 1990s, the state created a new type of prison: the state jail. Several of the newly created state jails were run by the state. Others, however, were operated by private firms. This situation created what was nearly a controlled experiment for comparing the effectiveness of private and public management. Indeed, the Texas Criminal Justice Policy Council executed and published such a comparison in 2003.⁶⁶¹ The running costs of state-managed and privately-managed state jails were compared. The report found a more than \$7 per day difference in per diem costs for offenders in favor of the contract jails (\$37.35 for public and \$30.13 for private).

The report was prepared for the 78th Legislature (2003) and the chair of the House Corrections Committee, Ray Allen (R), made use of it. Allen sponsored a number of bills that would have expanded the privatization of prisons in Texas. He relied heavily on the report in arguing that privatization will lead to substantial cost savings: an important goal given the budget deficit and the looming incarceration budget cuts.⁶⁶² Opponents of the bill cast doubts on the validity of the report's comparisons – doubts that were bolstered by the Criminal Justice Policy Council's own reservations about taking the cost comparison at face value.⁶⁶³ The privatization bills died in the Committee.

⁶⁶¹ "Mangos to Mangos," 2003.

⁶⁶² Gilmore interview.

⁶⁶³ Fabelo testimony, 2003.

English incarceration

During the mid-1990s the Labour Party was vehemently opposed to the idea and practice of private incarceration. Once Labour came into power, party leaders reviewed their position on private prisons. One of the main factors, as explained by Jack Straw the Secretary of State at the Home Office, for Labour's about face was that internal Home Office reviews found that private prisons are 8 to 15 percent cheaper than similar public prisons.⁶⁶⁴ The reports led Labour leadership to believe that the private sector provided better value for money than the public sector.

⁶⁶⁴ "Prison Staff Snub Straw".

Table 5.1: Privatization studies and their effect

Case	Was there an official Study?	Was it followed?	Did it change the policy direction?	Main focus of report(s).
TX education	<u>Yes</u> : TX charters.	Yes	Yes	Academic performance
MA education	<u>Yes</u> : MA charters	No	No	Academic performance
Eng. education	<u>Yes</u> : Two studies of PFI	Difficult to say	Difficult to say	Quality and speed in the delivery of infrastructure and ancillary services
TX MH	<u>Yes</u> : study of NorthSTAR	Not yet (2003 study)	No	Cost, quality and access.
MA MH	<u>Yes</u> : managed care	Difficult to say	No	Cost
Eng. MH	No			
TX incarceration	<u>Yes</u> : state jails	Bills presented on basis of study; the bills failed	No	Cost
Eng. incarceration	<u>Yes</u> : private prisons	Yes	Yes	Cost

What do the different case studies, summarized above in table 1, tell us about the significance of privatization-related research for the future direction of privatization initiatives? First, there is considerable variation across the five cases with respect to the use of state generated (or sponsored) research and with respect to its application to policy. In the cases of Texas charter schools and English prisons it appears likely that relevant evidence from research had informed policymaking. This clearly was not the case in English mental health where the government did not even evaluate the effects of privatization, let alone use research to inform its policies. The other five cases are ambiguous. In all of them some study of the policy had been conducted, although these

studies did not always involve a direct comparison of the public and private sector (true of Massachusetts mental health care and charter schools). In two of the five case studies it is doubtful whether the study actually informed the policy process (Massachusetts charter schools and Texas mental health). One study failed to affect policy although it formed the basis for several proposed bills (Texas incarceration). In two cases, studies might have had some effect on policy, but it is difficult to ascertain this either because of the contradictory conclusions of two different studies (English education) or because study conclusions supported existing policy (mental health managed care in Massachusetts).

Second, one may link the main focus of the studies to the stated rationale for privatization. As argued in the previous chapter, policymakers in small policy domains are much more inclined to justify privatization in terms of cost containment than policymakers in large domains. This carries over to official research of privatization. Studies of privatization in incarceration in Texas and England, and mental health care in Texas and Massachusetts (in the case of managed care) have stressed the financial gains from privatization. In one case (Texas prisons), this was, in fact, the only aspect of privatization that was investigated. In education, in contrast, the focus of studies in both Texas and Massachusetts (individual schools) was on academic performance and student diversity and not on cost-effectiveness.⁶⁶⁵

While supporting the thesis that formal policy learning does, in some instances, affect the future trajectory of privatization of delivery, this research does not offer much additional

⁶⁶⁵ The case of PFI in England is different from the other education cases because the object of privatization is not core services, but ancillary functions.

insight regarding the question of under what circumstances is policy learning important and under what circumstances is it inconsequential. Clearly, the impact of new research and evidence has something to do with policymakers' willingness to reassess privatization policies. It is a reasonable assumption that policymakers that, in the first place, endorsed privatization for pragmatic reasons, rather than ideological or political reasons, would tend to be more receptive to new research.⁶⁶⁶ However, as mentioned in the theory chapter it is difficult to determine what motivates policymakers to support or reject privatization. Therefore, the above proposition that privatization of delivery that is endorsed on pragmatic grounds is more susceptible to formal policy learning than ideologically or politically motivated privatization, is difficult to evaluate.

Policy change in response to media reports

An administrative model of policy evaluation stresses the importance of policy feedback driven by official government research, and perhaps to a lesser extent, academic research. A more politically oriented model of the policy feedback loop, however, would place a greater emphasis on the effect of media reports than that of policy research. From a political standpoint, it is more important for a politician to respond to a media report

⁶⁶⁶ A pragmatic reason for endorsing privatization is a belief that privatization would have a positive effect on one or more properties of a specific service program. Ideological privatization is based on a belief that the best state is a minimal state or/and that private delivery is more efficient than public delivery under almost all possible circumstances. A political grounding for privatization is a desire to change the political balance of power through privatization (these distinctions draw on a similar classification of privatization motivations in *Shrinking the State*, 1998). Ideologically motivated privatizers have a much stronger attachment to the policy than pragmatic privatizers, therefore, privatization studies are far less likely to affect their position than that of the pragmatists. Political privatizers are more flexible than ideological privatizers, but new information regarding privatization performance is less relevant to their motivation than to that of pragmatic privatizers.

regarding privatization than an official report that goes unnoted in the media.⁶⁶⁷

Politicians are sensitive to their public image and the way they respond to something that is in the news could influence the way they are perceived by media consumers. Does media coverage matter for the policy feedback loop in my case studies?

An analysis of my case studies suggests that media coverage might matter, but certainly not in all cases. In England, only one of the interviewees mentioned the role of the media in the policy process, and even then it did not appear that the media had any clear influence on the privatization process.⁶⁶⁸ In Texas and Massachusetts, there were several interviewees who did see the media as having a role in the privatization policy process.⁶⁶⁹

There were two clear examples of media coverage effects in my case studies: the capping of charter school growth and the increase of public oversight of private incarceration facilities, both in Texas.

Texas charter schools

Charter schools were expanding at a rapid rate in Texas during the late 1990s. The Texas Education Agency was responsible for monitoring charter schools and holding them accountable. The Agency, however, was undermanned and, as a result, could not properly monitor the charter schools. This created a situation, according to the Education

⁶⁶⁷ Obviously, there is an overlap between the two categories, official studies and media reports, in cases where the media reports the findings of official studies.

⁶⁶⁸ John Bowis, a former minister in charge of mental health care in the Major government, argued that media preoccupation with the failures of the newly implemented care in the community helped him to increase treasury allocations to mental health care. These reports, however, did not affect privatization.

⁶⁶⁹ Johnson interview; Davis interview.

Commissioner at the time, that the Agency often relied on media exposure to alert it to cases of charter school transgressions.⁶⁷⁰ From 1999 to 2001, the media exposed numerous examples of charter school failure and malfeasance. The leading stories were about the Emma L. Harrison charter school in Waco that accumulated more than \$300,000 in debt in less than one year; the Rameses School in San Antonio whose chief executive officer inflated attendance numbers to get more money and used some of the state funding for personal purposes; the Prepared Table charter school in which the superintendent paid himself and his wife over \$260,000 a year in salary; the Cypress Lodge Charter School which surrendered its charter without opening after receiving \$240,519 in public funds; and the Academy of Austin which closed in the middle of the night without giving prior notice to the parents or students who woke up the next morning to find that their school was gone.⁶⁷¹ These very well publicized scandals created pressure on the legislature to review charter school policy and legislation. The House Committee on Public Education was charged by the Speaker to submit a report to the legislature on the backdrop of these revelations.⁶⁷²

There is little doubt that the media helped set a critical atmosphere regarding charter schools that informed the subsequent restrictive legislation. The media's influence in this case did not stop there. Throughout the legislative process, in 2001, the media continued to report stories about charter schools failing to live up to expectations. This continued

⁶⁷⁰ Nelson interview. The commissioner presented an example of a Houston television series on malfunctioning charter schools that spurred the agency into action.

⁶⁷¹ See Stuart Eskenazi, "Flunking Out," *Dallas Observer*, 22 July, 1999; "A review of Charters in Trouble," 2000; Alberta Phillips, "Charter Schools Free and Easy with Our Money," *Austin American Statesman*, 23 May, 2001.

⁶⁷² Texas House Public Education Committee Report, 2000.

media exposure could explain why Teel Bivins, the Chair of the Senate Education Committee, and Governor Rick Perry both refrained from killing off a bill they were clearly unhappy about. It is possible that these veto players were reluctant to exercise their veto due to the intense media coverage. Under such circumstances, a veto would have almost certainly provoked a very negative media reaction. Thus, in the case of H.B. 6, the bill that capped the growth of Texas charter schools, media attention played a dual role. First, it drew the attention of policymakers and the public to the failings of charter schools, hence putting into motion the legislative process. Second, the media probably also prevented the bill from dying in the Senate Education Committee or on the governor's desk.

In the previous discussion of formal policy learning, I have presented the Texas charter school case as one in which formal policy learning has had a clear effect on the policy outcome. Is this case over-determined in the sense that I use both media coverage and formal policy learning to explain the very same dependent variable: the change in charter school approval policy? I think not. The two forms of policy feedback complemented each other in the legislative process. The media coverage framed charter schools as a 'problem' that required legislative attention. The Committee Report responded to this media-generated perception of charter schools. The Report's proposals set the foundation for the subsequent bill. The report's critical yet systematic evaluation of charter schools also convinced legislators that there was need for action on this issue. Finally, the report also provided new material for the media in their continuing critical reports on the charter

school issue.⁶⁷³ Finally, the persistent media reporting had kept up the pressure on policymakers to approve the proposed restrictive legislation on charter schools.

Texas incarceration

During the 1990s, a series of scandals in private incarceration facilities made headlines in the media. Among these were stories of potentially dangerous inmates who escaped a private facility, prison riots that resulted in casualties among both inmates and staff, and, most notably, an incident in Brazoria County in which prison officers were videotaped beating inmates. Some of the inmates in the Brazoria incident incurred serious injuries as a result of the beatings. The videotape of the incident, which was used by the prison for training purposes, made its way to the broadcast media and created a public uproar.⁶⁷⁴

The legislature was put under pressure to respond by these incidents. In 1997, the Texas legislature passed S.B. 367. The bill did not restrict the growth of private incarceration facilities, but it did increase state oversight of private facilities.⁶⁷⁵

These two cases suggest that media attention, or at least negative attention, does have an effect on policymakers and, ultimately, the privatization trajectory. Interestingly, media played a role through negative, not positive coverage. Why is this the case? This might be due to media bias against privatization. Another, perhaps more likely, reason is that media coverage, in general, tends to be negative.⁶⁷⁶ ‘Everything is going according to

⁶⁷³ “Legislative Panel Calls for Moratorium on Charter Schools”, *The Associated Press State & Local Wire*, 28 December, 2000; Michele Kurtz, “Bill Aims to Stall Charters' Growth” *Austin American Statesman*, 13 February, 2001.

⁶⁷⁴ Cummins (2000), 112-125.

⁶⁷⁵ Cummins (2000), 125-132.

⁶⁷⁶ For a more elaborate description of the tendency for negative coverage in the mass media see: Doris A. Graber, *Mass Media and American Politics*, (Washington D.C.: CQ Press, 2002): 105-131.

plan' simply does not make for an interesting news story. This is not to say that there is no positive coverage of privatization. In all three political systems, there are media outlets that support privatization. Nevertheless, the big stories regarding privatization are those that involve failure and scandals.⁶⁷⁷ It would be unwise, however, to conclude too much from these two examples. First, the examples are drawn from the same political system. It could very well be that the relation between privatization policies, the media, and policymakers in the other political systems is different. As suggested above, for example, the media appears to have a smaller – or at least a different – role in England than it does in the United States. Second, even these two cases are, in fact, quite different. Although in both cases there was some media effect, it was not the same. In the case of Texas incarceration privatization, the new legislation did not have a direct effect on privatization trends: legislation did not set limits on privatization, but required, instead, that higher standards be enforced in private facilities. In the case of charter schools, privatization was significantly slowed down.

Why is it that the media played a role in these two cases, yet not in others? One possibility is that the coverage in these two cases was especially negative (perhaps because the transgressions were particularly egregious) creating more pressure on politicians to react than in other cases in which there was less coverage or/and the coverage was less negative in its tone. Without conducting systematic content analysis, I

⁶⁷⁷ An interesting possibility is that coverage becomes more negative over time regardless of private provider performance. A 1998 study of media coverage of managed care (Mollyann Brodie, Lee Ann Brady and Drew E. Altman, "Media Coverage of Managed Care: Is There a Negativity Bias?" *Health Affairs*, Vol. 17, 1 (January/February 1998): 9-25) found that media coverage, especially broadcasting media coverage, gradually became more negative. The reason for this appears to be that at the time that a program is established the media concentrates on presenting the program to the public. With time, however, there is less interest in such reporting and there are more opportunities to report human interest anecdotes that often take the form of stories of failure with the private provider cast in the role of the villain.

cannot confirm or refute this explanation. It must be said, however, that negative media coverage of privatization is not unique to these two cases. For example, private prisons in England have received their fair share of negative media coverage in recent years.⁶⁷⁸ This negative coverage, however, has not produced any discernable effect on policy.

A final question related to the relationship between the media and privatization policy, which is worth asking is whether there are significant differences across policy domains in media coverage? The media pays more attention to education than to mental health care or incarceration. One clear reflection of this difference is the fact that many newspapers dedicate a regular supplement to education issues. To the best of my knowledge there are no newspapers that dedicate a regular supplement to mental health care or incarceration. This is not to say that the media does not cover privatization in mental health or incarceration. It does, and media reports have proven to be a valuable source of information for several of my case studies. What is different is that media reports on privatization in education are more frequent and more prolonged than reports in the small domains. In the case of Massachusetts' mental health privatization, for instance, every couple of years or so, the media latches on to a story of private provider malpractice that had adversely impacted patients. These stories, however, do not last more than a few days at most, so it is plausible to assume that their political impact is small.

⁶⁷⁸ See for example: Adam Sampson, "Private Prisons: Who Profits?" *The Independent*, 3 September, 1993; Alan Travis, "Private Prisons," *The Guardian*, 26 August, 1998; David Wilson, "New Labour's Profitable Deal with Private Prisons," *Birmingham Post*, 20 April, 2002.

If it is true that privatization in large domains attracts more media attention, and that media attention tends to be negative, then the role of the media in the feedback process could have a differential effect on privatization depending on the size of domain. The media might make privatization more difficult in large domains by focusing public and policymakers' attention on the failures of private providers. In small domains, however, the media would not pursue privatization issues with the same persistence as it does in the large domains. As a result, media coverage would have less of an effect. There is little, however, in the case studies to support such a theory. Admittedly, this short foray into the relationship between media reporting and the privatization process has provided more questions than answers.

Influence on actors

Privatization could influence future policy through policy learning and by generating media coverage. A different aspect of the privatization feedback loop is the way it impacts different actors. Privatization affects four distinct properties: the identity of actors, their strategies, their perceptions of privatization, and their relative strength. I will discuss each property in turn.

Identity

The privatization process could lead to situations in which some actors emerge while other actors disappear from the policy scene. Needless to say, such developments could have an effect on the policy process. In none of my cases do I witness actors completely

disappearing from the policy scene. The reason for the persistence of actors despite the changes brought about through privatization is twofold. First, in none of the cases did the public sector completely cease to exist as a service provider. The new delivery regime that was created was not a fully private one, but a mixed system of delivery. The continuing existence of the public sector has meant that actors that are predominantly associated with public sector provision (e.g., public sector unions) still retain an enclave (or much more than that) in the post-privatization world. Second, it is difficult to eliminate actors that have been around for a long time. Organizations often transform and adjust to new circumstances in order to continue their operation. For instance, even in the case study with the most extensive privatization, Massachusetts mental health care, the public sector unions were able to survive. The leaders of the SEIU union understood that the new environment required them to change their composition. Therefore, they began to recruit members in the private sector, contrary to their previous policy of exclusive public sector representation.⁶⁷⁹

The two main examples of new actors that emerge in the wake of privatization of delivery are private providers and investors, and private service recipient' organizations. During the second stage of privatization, that is the initial approval and implementation of privatization policies and/or legislation, private providers are not always an important factor or a factor at all for two reasons. First, in some cases the private providers simply do not exist before the advent of privatization. To a great extent, this had been the situation in the privatization of mental health in Texas. Private providers emerged in response to the new opportunities that privatization initiatives, most notably NorthSTAR,

⁶⁷⁹ Cohn interview.

created for the private sector. Second, even when a private sector network is already in existence, until initial privatization initiatives prove to be politically viable, many private sector entities would prefer to sit on the sidelines. This was the case with private investors in the private incarceration industry in Texas in the late 1980s and also one of the reasons why the Conservative Party's PFI initiative floundered in its early stages.⁶⁸⁰ This apprehensive behavior, on behalf of providers and investors in the private sector, is not surprising. Prudent private entities would think twice before investing time, money and political capital in what appears to be an uncertain future market. Privatization tends to be controversial, so the establishment of a stable private delivery sector is far from certain, and even if private delivery is established, reversals are still possible (e.g., the Assisted Places Scheme in English education). Once, however, the private delivery market is established and operating, private providers and investors are more willing to become active in the political domain and have more of a reason to do so.⁶⁸¹ Those that are already involved in the domain would act to protect and expand their stake. Newcomers from the private sector would gain confidence from the very existence of a functional private delivery sector and enter the political fray. As Michael Dukakis, a former governor of Massachusetts, pointed out, it is only after privatization has already been established that the private sector becomes an influential actor – and a potential problem.⁶⁸²

⁶⁸⁰ Cummins (2000), 90-94.; Craig interview.

⁶⁸¹ Dukakis interview.

⁶⁸² Governor Dukakis stressed that the private sector could become a problem not only because it tends to use its economic power to influence the political sphere, but also because politicians solicit private sector campaign contributions, thus creating serious ethical problems that touch on the issue of the appropriate public-private relationship (interview).

The other important actor that emerges in the wake of privatization is the private sector recipient constituency. This constituency is attached to private delivery in the same way that the traditional service constituency is attached to the public sector. The private sector constituency has a significant interest in protecting and even expanding existing government funding for the private sector. As is the case with the traditional public sector constituency, recipient organizations will usually emerge to promote this interest. Policymakers intent on privatization are often aware of the political advantage in creating such a constituency. For example, in a confidential internal memo regarding the 1993 Education Reform Act in Massachusetts, a prominent figure in the administration voiced his concerns to Governor Weld that reforms had not gone far enough to justify the price tag. Nevertheless, the writer recommended that the governor sign the bill arguing that:

“With the choice and charter school elements, the governor can say that the bill is the first to respect parents. We can solicit, showcase, and approve charter school proposals (...). The choice program will in time create a demand and a constituency that will help us win expansion of the program.”⁶⁸³

The school choice and charter school constituencies were intended to provide a beachhead for further efforts to expand private delivery in education through these programs. This prediction, namely that the new constituency would facilitate future expansion, has turned out to be true. Parents of children in charter schools have created a political constituency for charter schools in Massachusetts. One of the leaders of the major umbrella organization opposed to charter schools in the state claimed that despite their small numbers, charter school parents are effectual advocates for the charter school

⁶⁸³ Confidential memo from APC Senior Staff to William Weld, “Education Conference Report: Reform Summary and Options,” 1 June, 1993.

cause due to their intense interest in the issue.⁶⁸⁴ Nevertheless, the far larger public school stakeholder coalition still has the upper hand in Massachusetts politics.

Although pro-privatization policymakers often complain that their efforts are defeated by “vested interests”, they are not necessarily averse to creating their own pro-privatization vested interests to promote the cause of privatization.

Perceptions

Actors’ perception of privatization should not be taken as a given. Perceptions can change over time depending on the privatization experience. These perceptions could apply to privatization in a specific program: for instance, service recipient families’ perception of privatization in mental retardation could evolve after initial exposure to private providers. Or it could apply more broadly to privatization in general, as would be the case if the mental retardation service recipient families’ view of privatization in their own field would be informed by their general impression of privatization.

Logically, if an actor’s perception changes for the better following her initial privatization experience, then we should expect her position to become more supportive of privatization, and the likelihood of an expansion of privatization would grow. Deborah Auger argues that it is possible to witness such a trend in the United States.⁶⁸⁵ In the past, privatization initiatives were introduced by Republican right-wing policymakers with very few exceptions. In the last few years, in contrast, Democrats have become

⁶⁸⁴ Segal interview.

⁶⁸⁵ Auger (1999).

increasingly involved in privatization efforts. The reason for the change, according to Auger, is that positive practical experiences with privatization of delivery have lessened the fears of many a Democrat regarding the policy. Among my case studies, this appears to be the case with Labour's change of heart on prison privatization. The Labour junior minister in charge of prisons in the Home Office claimed that visits to private prisons changed her mind and that of the Home Secretary, Jack Straw, regarding prison privatization. The conditions in the private prisons were much better than they originally believed, leading them to change their negative position on prison privatization.⁶⁸⁶

While positive privatization experiences could change actors' perception for the better and facilitate future privatization, perceived negative experiences could create new opposition to privatization. Contrary to Auger's expectation, the perception of privatization could also worsen with time. This appears to be the case with charter schools in Texas and Massachusetts. The Texas law that authorized charter schools passed by a wide margin. Both Democrats and Republicans supported charter schools. Numerous scandals and the overall disappointing performance of charter schools, however, eroded support for charter schools in the legislature. Organizations that were initially supportive of the charter school concept, such as the Texas PTA, became increasingly skeptical in light of the negative performance of many charter schools.⁶⁸⁷ In Massachusetts, the increase in opposition to charter schools came about more for financial reasons than academic reasons. With the growth in the number of charter schools, an increasing number of traditional public schools lost students, and funding as a

⁶⁸⁶ Quin interview.

⁶⁸⁷ Tounget interview.

result, to charter schools. This loss of funding has driven many public school stakeholders to adopt a critical stance on charter schools.⁶⁸⁸

There is little doubt that the privatization experience often weakens opposition to privatization by demonstrating to opponents that privatization of delivery does not bring about the demise of publicly-funded services, and in some cases, might even improve them. Nevertheless, there are cases in which the privatization experience moves certain actors to adopt a more critical position than the one they initially held. The response depends on the perceived ability of private providers to deliver a quality service and the degree to which growth in private delivery undermines existing public delivery. These changing perceptions, if held by influential actors, could bring about a change in the fortunes of privatization of delivery – for better or worse.

Strategies

The advent of privatization of delivery could bring certain actors to adjust their strategies without changing their fundamental perception of privatization. This is often the case with public sector unions. Unions are universally opposed to privatization. Privatization invariably harms their interests by reducing their membership and their negotiating power. When privatization is initially proposed, unions work hard to defeat these proposals. However, once privatization has already been implemented, the unions' incentive structure is transformed. Unions face three possible courses of action. First, they can continue to fight privatization tooth and nail doing their best to defeat new initiatives and roll back exiting private provision. This course of action, however, is not

⁶⁸⁸ Blumer interview; Segal interview.

costless. First, to fight privatization, the unions must use both financial and political capital. Investing these resources in fighting privatization is not necessarily a wise decision given previous failures in blocking the policy. Second, by solely focusing on defeating privatization, the unions are perhaps missing an opportunity to participate in shaping the emerging private delivery sector.

A second option that unions have in such a situation is to accept privatization as a fact and concentrate on making it more union and worker friendly. The unions, therefore, radically change strategy, perhaps presuming that the choice is no longer between ‘privatization’ and ‘no privatization’ – they have already lost that fight – but between privatization in which they have a voice and privatization in which they are left out in the cold. The downside of this strategy is that unions give up on their fight against privatization, so the expansion of privatization becomes more likely.

The third possible course of action is for unions to combine both approaches, creating a dual track strategy. On the one hand, the unions continue to oppose privatization. On the other hand, the unions participate in forums that include government and public interests that shape the contours of the private delivery sector. The unions also negotiate with private providers and unionize private sector workers. In several cases, recent privatization in English education, privatization in English general healthcare, and privatization in Massachusetts’ mental health care in the 1990s, the unions have opted for a dual track strategy.⁶⁸⁹ The clear advantage of this strategy is that unions are allowed a foothold in the private sector, while still continuing the fight against the expansion of

⁶⁸⁹ Lowe interview; Cleeveley interview; Cohn interview.

privatization. In one case, a union official argued that the union hoped the “voice” track would undermine privatization, and not reinforce it.⁶⁹⁰ By signing an agreement with the government and private providers that guaranteed workers in the public sector similar pay and benefits to their public sector counterparts, the unions intended to decrease private sector profit and make private provision economically unviable.

This dual track strategy, however also has its downsides. First, one could imagine that both private providers and privatizing policymakers would have problems negotiating in good faith with an intransigent union that explicitly denounces private sector involvement. Second, the union’s cooperation with government and private providers on privatization could signal to other actors that they are insincere in their fight against privatization, thus weakening the opposition. Third, the adoption of any conciliatory stance towards privatization provokes internal opposition within unions by members or external opposition from other unions who accuse the leadership of ‘selling out’.⁶⁹¹

There are some signs in England that by opting for a dual track strategy, while unsuccessful in blocking privatization of delivery, the unions have managed to win a voice in shaping the contours of privatization of delivery.⁶⁹² Yet this success might be dependent on having a union-friendly party in power (Labour). Hence, a change at the top could result in unions reverting back to an exclusively confrontational strategy.

⁶⁹⁰ Lowe interview.

⁶⁹¹ Cohn interview; David Armstrong, “State Union to Recruit from Private Agencies,” *Boston Globe*, 4 May, 1994.

⁶⁹² McKenna interview; Lowe interview; Cleeveley interview.

Relative power

Privatization shifts responsibilities from the public to the private sector. The shift in responsibilities could entail a parallel shift in power. Part of the shift in power is due to the emergence of new actors on the private side as explained in the first sub-section. The growth in influence of the private sector due to the creation of a private lobby entails a corresponding decrease in the power of the anti-privatization lobby. A different reason for the decline in public sector power is the possible drop in the number of public sector workers and recipients of public sector services. This occurs when the dominant mode of privatization is privatization by substitution.

Some observers go as far as arguing that one of the main goals of privatization is to decrease the power of specific public sector organizations, especially unions.⁶⁹³ Yet, my case studies offer little support that privatization brought about a noticeable decline in union power. In the field of education this is not surprising. The reach of privatization of delivery has, to date, been minimal, so it is unlikely that it could have adversely affected public sector union power in any significant way. In the incarceration case studies, the prison officer unions in England and Texas have not lost membership due to privatization.⁶⁹⁴ In the case of mental health, it appears that the influence of public sector unions in England and in Texas was quite small to begin with, so it is difficult to perceive a decrease in power. Massachusetts' mental health might be the only case in which, union influence did decline as a consequence of privatization. Although unions have attempted

⁶⁹³ Wallin (1997).

⁶⁹⁴ The Prison Officers' Association in England has actually experienced membership growth in recent years. (see Prison Officers Association, "About Us," <http://www.poauk.org.uk/aboutfr.html>, accessed 26 October, 2004; AFSCME Texas Correctional Employees Council Number 7).

to recruit members in the private sector, they have met with little success because private sector workers doubt whether unions have the ability to promote private sector workers' interest in the new mental health system.⁶⁹⁵ Although privatization shifts power from public to private sector actors, it is easy to overstate the significance of this change.

Conclusion

Privatization of delivery is not a static phenomenon. The privatization process evolves over time because of changes in exogenous variables and the way that the privatization experience itself reshapes the policy process through the introduction of new information, new actors, and the way it restructures incentives.

It is difficult to derive strong conclusions regarding dynamics when the privatization experience is relatively new, but several important observations could still be made. First, policy learning based on official data and studies of privatization occurs, but not in all cases. The studies that form the basis of such policy learning differ in focus according to domain size. In small domains, these studies often concentrate on whether privatization achieves cost containment, while in large domains the focus is usually on the quality of the privatized service.

Second, media reports on privatization could also have some impact on the trajectory of future privatization. In the two cases in which I did find a connection between media

⁶⁹⁵ Funk interview; Phone interview with Tim O'Leary, Massachusetts Association of Mental Health, 1 October, 2004.

coverage and privatization policy, negative media coverage either slowed privatization down or led to stricter public oversight of public providers. It could be that in cases in which the media does have an effect over privatization, it is generally negative.

Third, the privatization experience could also inform future privatization through its direct effect on actors. First, Privatization introduces new actors to the policy scene: most notably, private providers and investors and the recipients of private services. These new actors strengthen the pro-privatization lobby. Second, past experience could change actors' perception of privatization from a negative to a positive one, or vice versa. The direction of the change, unsurprisingly, depends on the perceived success of private providers, usually in a specific field, although a more general effect is also possible. Third, privatization sometimes impacts the strategies that certain actors employ in relation to the policy. The one clear example of this is the way in which public sector unions have changed their strategy from one of categorical rejection of privatization before it is first implemented, to a more complex dual track strategy. In pursuing the latter strategy, unions strive to negotiate a more union-friendly form of privatization with government and private providers, yet at the same time oppose any further privatization. Finally, privatization can also shift power from public sector actors, primarily unions, to private sector actors. Be that as it may, I have found little evidence for such shifts in the different case studies.

This chapter is unable to offer the reader a clear prediction regarding how past privatization would impact the future extent and direction of privatization. There is some

ground for arguing that initial privatization facilitates future expansion, the increased presence of private sector lobbies for example, but there are also countervailing forces such as negative media effects. This chapter cannot offer a detailed map of privatization dynamics. Hopefully, it does create a few guideposts for future research and analysis.

Chapter 6: Conclusion

This chapter is dedicated to three tasks: a summary of my main conclusions, an application of these conclusions to additional case studies, and some thoughts on the findings' implications for service recipients and the future trajectory of privatization.

What shapes privatization of delivery

In the introductory chapter, I described several reasons why many people – both supporters and opponents of privatization – expect privatization to become increasingly prevalent in contemporary welfare states: the rise of the neo-liberal ideology, the crisis of the mature welfare state and the pressure applied by powerful international forces and organizations. For these reasons, one might expect privatization to be a rapidly expanding phenomenon. Reality, however, belies these predictions. Privatization varies tremendously across different policy domains. More importantly, this study argues that there are systemic reasons for these differences. Therefore, it is unlikely that a change in power or a simple process of 'catch-up' over time would erase these differences. The patterns we witness at the present are likely to persist in the foreseeable future.

The variation across the nine case studies was considerable and it followed a clear pattern. Privatization rates in mental health were considerably higher than privatization rates in the other two policy domains. In contrast, privatization rates in education were lower. This was the main general finding of this study, but it served more as a departure

point than as an endpoint for the research. This finding could have been no more than a coincidence. It was necessary to delve deeper and see if this pattern was explainable by systemic reasons or if it was merely the non-representative product of a small-‘n’ study. Through the in-depth exploration of the different case studies, this work has generated a limited number of systemic explanations for this pattern: the explanations that emerge from the comparison of different privatization events within and across the nine case studies.

The comparison of privatization rates in the nine case studies also highlighted another important finding. There was no discernable privatization pattern across the three political systems. This outcome is surprising for two reasons. First, Power Resource Theory predicts that policies identified with the right – privatization, in this case – would be more prevalent in political systems where left power is weakest. Power Resource Theory would predict therefore that privatization rates in Texas, clearly the most right leaning of the three political systems, would be significantly higher than in the other two systems. Yet this was not the case. Second, much of the comparative politics literature argues that legal frameworks and institutional structures greatly determine the ability of political systems to adopt certain policies. The English political system appears to create a more favorable environment for privatization than the American states, because, unlike the United States, it does not have a restrictive constitution and there is only one veto point in the political system. According to this line of reasoning, we should expect more privatization in England than in the American states.

Why, then, have we not witnessed any of the predicted differences across political systems? I argue that Power Resource Theory fails to explain the variation in privatization rates mainly because certain center and left-wing politicians endorse privatization of delivery (but not finance), although they are less likely to do so than their right-wing counterparts. The lower likelihood that left-wing politicians would endorse privatization, in comparison to their rightwing counterparts, is offset, however, by the greater likelihood that they would succeed in passing and implementing privatization. Legal and constitutional restrictions that apply to privatization also have less significance than one might believe. It is possible to re-interpret restrictive legislation in ways that are favorable to privatization. Furthermore, privatization entrepreneurs have created policy innovations (e.g., charter schools) that effectively bypass restrictive legislation. Finally, veto points are, indeed, used to block privatization initiatives. Nevertheless, the negative effect of veto points on privatization, in fragmented political systems, is offset by the positive effect of the numerous policy process entry points.

What explains the variation across policy domains? Evidently, there is something about specific policy domain characteristics that produces the reported differences in privatization rates. Throughout the dissertation, I have evaluated, and rejected, a number of leading candidates, among them: differences in organizational prowess, differences in the effectiveness of privatization, and differences in the public's ideological-historical attachment to the public provider. Instead, I highlighted the importance of two domain-specific attributes: the domain's size and its structural stability. Large domains with many stakeholders are more difficult to privatize than small domains. Stable domains offer less

of an opportunity for privatization than domains that are in flux for reasons other than privatization.

Why are these two factors so important? The short answer is that privatization is an uphill battle at its initial stages, so factors that either lessen opposition or mitigate its political significance are very important. Yet, this begs the question, why are these two factors so important and not others that also plausibly influence the strength and coherence of the opposition? In the case of domain size, the reason is quite simple. Issues in large domains easily translate into electoral issues and politicians are very much aware of this. Even well-organized and well-funded stakeholders in small domains would find it difficult to turn their issues of concern into important electoral issues. In a way, the importance of domain size is a uniquely democratic phenomenon: greater numbers translate into greater political relevance. Institutional restructuring provides a special opportunity for privatization entrepreneurs by weakening opposition in a given field. It creates favorable conditions for forcing the opposition to compromise, it obfuscates privatization, and it dilutes the power of potential opposition by creating struggles on numerous fronts. Institutional restructuring, in other words, creates the conditions for effectively employing numerous political tactics in support of privatization.

In light of these two factors, we can make sense of privatization patterns. Large domains that experience institutional stability are the least susceptible to privatization of delivery. This is the case of K-12 education. Small domains that undergo institutional restructuring are prime candidates for privatization. This explains the high privatization rates in mental

health care. Policy domains that are either small but stable (the case of incarceration) or that are large and experience restructuring, will be somewhere in between with respect to the extent of privatization.

The difference between privatization in large and small domains is expressed in other properties, besides its extent. My research has shown that large and small domains differ in the justification for privatization, in the strategies that policymakers employ to promote it, in its economic-budgetary backdrop, and in the influence of additional factors.

When a policymaker wants to pursue privatization in a large domain, he is facing a formidable task. There are, however, certain strategies that could help privatization along. The common denominator of these strategies is obfuscation. Policymakers manage to obfuscate privatization initiatives through the use of quasi-privatization (public-private hybrids that can still be presented as public providers), privatization that moves gradually from periphery to core services, and, perhaps, crafted speech (the use of euphemisms for privatization in public discourse). Such tactics are necessary in large domains where opposition is highly significant. Timing is also of prime importance in a large domain. It is far more difficult to get a new privatization policy approved during a budget contraction than during good budgetary times. Yet even in the best of times it is difficult to overcome opposition to privatization. In rough economic times, privatization will almost by necessity take the form of privatization by substitution: the replacement of

existing public providers with private providers. This form of privatization, for reasons discussed in chapter 4, is impractical in large domains.

In a small domain, the privatization dynamic is fundamentally different. There is less of a need for obfuscation strategies, so policymakers often choose not to use such strategies.⁶⁹⁶ Economic timing in a small domain is also of less significance than in a large domain. Policymakers privatize in both good and bad budgetary times, although in different ways and for different reasons. Privatization by addition in good economic times means less opposition. Privatization by substitution in bad times is sometimes attractive as a method of cost containment. Cost containment, in general, is a much more important motivation/justification for privatization in small domains than in large ones. Opportunities for cost containment through privatization are a main reason for privatization in small domains. This preoccupation with cost containment in small domains is also expressed in formal policy learning: government evaluations of privatization in small domains tend to focus on prospects or evidence for cost containment.

I have found that demand and supply factors also play a role in privatization of delivery. A spike in the demand for a service facilitates privatization by creating an opportunity for privatization by addition. This factor has had particular importance in incarceration privatization. The supply side can also be significant in shaping privatization. The prior

⁶⁹⁶ The use of the two main obfuscation strategies, quasi-privatization and a gradual movement from periphery to core, comes with a price. Policymakers, in employing these methods, are settling for either partial or very gradual privatization. This means that the prospective benefits from privatization, from the policymakers' viewpoint, are correspondingly diluted or partially deferred. Hence, in small domains policymakers often forego the use of obfuscation.

existence of an extensive private provider network could facilitate privatization in two ways: by inspiring confidence in policymakers with respect to the private sector's capacity to provide a service and by creating the basis for an influential privatization lobby.

Most of the research was dedicated to the early stages of privatization. Privatization, however, evolves as a policy over time. In chapter 5, I focused on the impact of certain endogenous factors through the mechanism of a feedback loop. Formal policy learning and the media both play an occasional role in privatization. In the case of the media, this role appears to be largely negative. Negative media can slow privatization down or lead to greater public oversight of private providers. Prior privatization experience also affects different actors involved in the policy process. Most importantly, private sector actors emerge and grow stronger and more involved with the expansion of privatization, opening the way, perhaps, for an acceleration of future privatization. Unions often change their strategy vis-à-vis privatization from absolute rejection in the early goings to a negotiated accommodation once they realize that they cannot bring about the elimination of private contractors. This strategy changes the struggle over privatization from one over its existence and extent to one over its content. The way that privatization affects private providers and unions might imply that the further privatization progresses, the easier it is going to be for it to expand even further. Thus, privatization might accelerate in the future. I will return to this point in the final section.

Applying the conclusions to other case studies

The findings and conclusions regarding the determinants of privatization of delivery and its dynamics are derived from an in-depth study of nine case studies. The study design was structured in a way that would produce generalizable results by creating the necessary comparative leverage to evaluate the relative importance of different independent variables in the privatization process. Nevertheless, to further support, and perhaps modify, the general propositions generated through this study, one would have to evaluate these propositions in the context of other relevant case studies. Unfortunately, an extensive testing of the propositions in other cases is beyond the scope of this dissertation. In this section, I will take a first cut, primarily based on secondary sources, at a broader evaluation. More specifically, I will evaluate how well my central propositions apply to two other political systems – Wisconsin and Israel – and three other policy domains – general healthcare, child welfare services (foster care) and pensions (see table 6-1).

Table 6.1: Case Studies

	Schools	Mental health	Incarceration	Foster care	Health care	Pensions
MA	primary	primary	primary	secondary	NR	secondary
TX	primary	primary	primary	secondary	NR	secondary
England	primary	primary	primary	secondary	secondary	secondary
Wisconsin	secondary	secondary	secondary			
Israel	secondary	secondary	secondary			

“Primary” designates case studies based on in-depth research involving primary and secondary sources.

“Secondary” designates case studies based on secondary sources.

“NR” = Not Relevant.

The two additional political systems I have included in this section are Wisconsin and Israel. Wisconsin is used as an additional case of an American state. The main reason for choosing Wisconsin is that Wisconsin was a pioneer in education privatization in the United States. Given that my study finds that privatization in education is minimal, it seems reasonable to choose a case that could put this claim to the test. Wisconsin also belongs to a very different region in the United States than Texas and Massachusetts, something that could be reflected in different privatization patterns. I have also chosen an additional international political system: Israel. I chose Israel because it is a country that does not belong to the list of liberal welfare states. Israel's combined economic and welfare state structure has resembled more closely neo-corporatist states than liberal states, although it has been moving in recent years towards the liberal model. The difference in welfare state/economy model could result in a different privatization dynamic.

I have extended my study to three additional policy domains. First, I have chosen one additional large service domain – general healthcare. Although the examination of privatization in this domain in the United States is irrelevant, because the public sector has always represented such a small share of the delivery market, an evaluation of privatization in English healthcare is an appropriate test for my propositions regarding large domains. As an example of a small policy domain I have chosen child welfare or, more precisely, foster care which in recent decades has become the main service provided under the heading of child welfare. Although foster care has never been an exclusively public sector service in any of the three political systems surveyed in this study, in the not

too distant past, a large share of child welfare services were publicly provided, creating a significant potential for privatization. The third policy domain is large, but not a service field: pensions. Although, this study is dedicated to privatization of delivery and privatization of services, it would be interesting to take a first stab at examining how well do my conclusions apply to a different type of privatization.

Privatization in Wisconsin

In the 1990s, Wisconsin was on the frontline of privatization, with the introduction of public school vouchers in Milwaukee schools and Governor Tommy Thompson's (R) well-publicized privatization of TANF programs.⁶⁹⁷ Wisconsin embraced privatization policies earlier than most states. One might expect, Wisconsin, therefore, to have higher privatization rates than most other states given its head start. Is this, indeed, the case?

Education

In Wisconsin, 41,500 students attended charter schools or received public school vouchers in the 2003/4 school year, representing 4.7 percent of public school students in the state.⁶⁹⁸ The Milwaukee voucher program was established in 1990. The program was the initiative of Democratic urban community leaders, most notably state representative Annette "Polly" Williams, and the Republican governor, Tommy Thompson.⁶⁹⁹ Vouchers

⁶⁹⁷ Mark Carl Rom, "Transforming State Health and Welfare Programs," in Virginia Gray, Russell L. Hanson and Herbert Jacob (eds.) *Politics in the American States: A Comparative Analysis* (Washington D.C.: CQ Press, 1999), 378.

⁶⁹⁸ The number of students in charter schools was 26,797 (The Center for Education Reform, "Wisconsin," <http://www.edreform.com>, accessed 11 November, 2004) and 14,700 students were enrolled in the Milwaukee voucher program.

⁶⁹⁹ Joseph Williams, "Transforming an Education System: Milwaukee Private Sector Catalyzes Major Change," <http://www.childrenfirstamerica.org/research/choice/FordhamMilwaukeeStudy.pdf>, accessed 23 December, 2004.

were devised as a response to the failing public school system in the city. In 1995, the legislature capped the number of students in voucher programs at 15 percent of Milwaukee public school students – approximately 15,000 students.⁷⁰⁰ The number of students enrolled in the voucher program gradually grew throughout the 1990s and 2000s, and is currently pushing against the cap with 14,700 students.⁷⁰¹ The Republican legislature removed the cap in its latest session, but Governor Jim Doyle (D) vetoed the bill, so the cap has remained in place.⁷⁰² Opponents of vouchers argue that voucher expansion would undermine the public school system. The opposition to uncapped expansion of vouchers (and charter schools) has received support from a surprising source: Polly William, the main architect of the Milwaukee voucher program, who is concerned that expansion of the program beyond 25 percent of students could undermine the public system.⁷⁰³

Wisconsin also has a relatively large charter school system that educates over 3 percent of the students in the state.⁷⁰⁴ The great majority of Wisconsin charter schools (102 out of 109 schools in 2001-2002) were authorized by local school districts and are subject to many of the rules and collective work agreements that apply in their school district.⁷⁰⁵ In

⁷⁰⁰ Ibid.

⁷⁰¹ Sarah Carr, "Voucher Debate Flares as Program Nears its Limit," *Milwaukee Journal Sentinel*, 25 October, 2004.

⁷⁰² "Governor Vetoes School Choice, Charter Bills," *The Associated Press State & Local Wire*, 26 November, 2003.

⁷⁰³ Joe Williams, "Williams Wants Limits on School Choice," *Milwaukee Journal Sentinel*, 10 February, 1998.

⁷⁰⁴ Center for Education Reform, "Wisconsin."

⁷⁰⁵ Wisconsin Department of Public Instruction, "Legislative Report on Charter Schools," December 2003.

Milwaukee, the city council and the University of Wisconsin-Milwaukee have also been granted the authority to charter schools.⁷⁰⁶

The state legislature first approved the establishment of charter schools in 1993 capping their total number state-wide at 20 (1993 Wisconsin Act 16). The cap was removed in 1995.⁷⁰⁷ In 1997, in Wisconsin Act 238, the legislature further facilitated the expansion of charter schools by allowing school districts to contract with corporations, partnerships, associations or individuals for the establishment of charter schools.⁷⁰⁸ This Act paved the way for for-profit involvement in charter schools. Nevertheless, very few charter schools are managed by for-profit groups.⁷⁰⁹ Act 238 also allowed the authorizing school districts to enter into charter school contracts in which the charter school personnel were not considered school board employees, and charter school teachers were not required to have a license from the Department of Public Instruction.⁷¹⁰ This measure opened up the way for greater charter school independence.

Opposition to charter schools in Wisconsin was relatively weak at first, although it picked up with the introduction of for-profit companies into the system and the addition of authorizing entities that are not school boards. Teacher unions strongly opposed for-profit involvement in schools, and the potential removal of charter school teachers from union

⁷⁰⁶ Ibid.

⁷⁰⁷ Ibid.

⁷⁰⁸ Wisconsin Legislative Reference Bureau "Charter School Expansion," Brief 98-10, June 1998.

⁷⁰⁹ Phone interview with Paula Decker, Charter Schools Consultant, Wisconsin Department of Public Instruction, 18 November, 2004.

⁷¹⁰ "Charter School Expansion," 1998.

bargaining in places where public schools were converted to charter schools.⁷¹¹

Democratic Party leaders joined in the criticism of for-profit involvement in charter schools.⁷¹² The charter movement as a whole, however, has not been the target of the same type of criticism it has experienced in Massachusetts or Texas. Most discussions of charter school approval are a-political in nature, according to one report.⁷¹³ This could be due to the fact that in the vast majority of cases local school boards make the final decision about approving charters. Furthermore, charter petitions must be signed by at least 10 percent of the teachers in a school district or 50 percent of the teachers employed in one school of the school district.⁷¹⁴ This means that, in practice, education stakeholders – teachers, unions, school committees and PTAs – have significant control over the form charter schools take and even their growth. Obviously, this makes charter schools far less threatening to public school stakeholders and could explain the relative ease of charter school expansion in Wisconsin (see table 6-2).

⁷¹¹ Doug Erickson, “Can Deliver Better Education, Entrepreneurs Say,” *Wisconsin State Journal*, 30 July, 1990; Jeff Mayers, “Education Budget Troubles WEAC Leader,” *Wisconsin State Journal*, 23 February, 1999.

⁷¹² Ed Garvey, “Thompson Betrays Legacy of Seeking Best in Public Education,” *Capital Times*, 13 August, 1998.

⁷¹³ “Legislative Report on Charter Schools,” (2003).

⁷¹⁴ “Legislative Report on Charter Schools,” (2003).

Table 6.2: Charter School Growth in Wisconsin

Year	Number of Charter Schools
1994-1995	1
1995-1996	8
1996-1997	13
1997-1998	18
1998-1999	34
1999-2000	87
2000-2001	92
2001-2002	109
2002-2003	128
2003-2004	137

Source: Table 2: Charter School Growth in Wisconsin, "Legislative Report on Charter Schools," (2003).

Decisions whether to open a charter school are greatly determined by financial concerns.

There is a financial incentive for establishing charter schools: the United States

Department of Education provides federal grants to support planning and start up of new

charter schools.⁷¹⁵ Nevertheless, in cases in which the opening of new charter schools

could financially undermine traditional schools, the odds of new charter schools opening

are slim.⁷¹⁶ Thus, charter school growth is depressed during a budgetary crisis.⁷¹⁷

Privatization in Wisconsin education has gone further than in most other states, but it is

still very limited when compared to privatization in other policy domains. The voucher

program in Milwaukee has reached its limit. Charter schools in Wisconsin are expanding,

but a central reason for their relatively rapid expansion, when compared to Massachusetts

or Texas charter schools, is that these schools appear to incorporate less privatization

elements than in the other states, thus they attract less opposition. Finally, as is the case in

⁷¹⁵ "Legislative Report on Charter Schools," (2003).

⁷¹⁶ See Table 4: Reasons for Denial of Petitions or Proposals, "Legislative Report on Charter Schools," (2003).

⁷¹⁷ Decker interview.

Texas and Massachusetts, charter school expansion is dependent on good budgetary periods.

Mental health

The Wisconsin mental health system, as is true of the Texas system, is county-based. 72 counties are responsible for providing a range of mental health services to their inhabitants. In Wisconsin, unlike Texas, even service planning, finance and general policy are local affairs. As a result, privatization levels vary considerably across counties. In some counties, such as Dane County (Madison), most services are contracted out and the management of the entire system is administered by a nonprofit organization. In most rural areas, in contrast, the delivery of mental health services is primarily the responsibility of the county.⁷¹⁸ In such a system (as is true of Texas), there are no central figures that allow for any good estimation of the breakdown of publicly funded services across the different sectors.⁷¹⁹ One interviewee guessed that delivery responsibilities across the entire state were about evenly allocated between the public and private sector.⁷²⁰ In any case, it is clear that private delivery is quite prevalent and while some mental health services are still predominantly public (e.g., Community Support Programs), other services are mostly private (e.g., group homes).⁷²¹

⁷¹⁸ Phone interview with Elaine Carpenter, NAMI Wisconsin, 16 November, 2004.

⁷¹⁹ Phone interview with Dan Zimmerman, Wisconsin Department of Health and Family Services, 16 November, 2004.

⁷²⁰ Phone interview with Jennifer Lowenberg, Advocacy and Training Specialist, NAMI Wisconsin, 16 November, 2004.

⁷²¹ Carpenter interview.

The progression of privatization appears to be typical of the general trend in the United States. In the 1960s, most of mental health delivery took place in a number of county hospital and nursing homes, and two state hospitals. The advent of de-institutionalization, in the 1970s and 1980s, decreased the hospital census dramatically and brought about the creation of various community-based services.⁷²² Many of these were private arrangements. Because of the highly de-centralized nature of the mental health system, there was no single privatization event that focused attention on privatization. It is of little surprise, therefore, that there did not emerge a sustained and coordinated opposition to privatization of delivery in Wisconsin mental health.⁷²³ Privatization of delivery in Wisconsin mental health care was buoyed by de-institutionalization, took place far from the public eye, faced little opposition, and has been quite significant. We are by now familiar with these characteristics from the other mental health programs covered in this study.

Incarceration

In 2003, about 3,500 Wisconsin inmates were incarcerated in private out-of-state prisons. This figure constitutes approximately 16 percent of Wisconsin inmates.⁷²⁴ Wisconsin started to export inmates to out-of-state private prisons in 1996. The backdrop to privatization was similar to the cases of incarceration privatization in England and in Texas: a steep rise in incarceration numbers. Between 1992 and 2000, Wisconsin

⁷²² Carpenter interview.

⁷²³ This is not to say that there were no local efforts to block privatization of delivery. For example, in 1998, Brown County planned to close the Brown County Mental Health Center in Green Bay and transfer the 188 Center residents to the private Bellin hospital. Unions and family members opposed the closure of the public institution (AFSCME, "Wisconsin for Sale," May/June 1998, http://afscme.org/publications/public_employee/1998/pemj9809.htm)

⁷²⁴ State of Wisconsin, Department of Corrections, "Wisconsin Division of Adult Institutions 2003." July 2004.

experienced an increase of 254 percent in the prison population and a 247 increase in its prison budget.⁷²⁵ State prisons were 135 percent over capacity. Governor Thompson decided to address the overcrowding problem through new building, but also by contracting out with private prison firms.⁷²⁶

As in other states, there is a vocal opposition to the use of private prisons in Wisconsin led by labor unions and liberal groups.⁷²⁷ Although it is clear that this opposition was not strong enough to block privatization *per se*, it might have helped in preventing the establishment of private prisons in Wisconsin itself. The massive expansion in the Wisconsin incarceration system was viewed by some privatization proponents as ideal timing for the establishment of private prisons. Representative Scott Jensen (R) explained that establishing new private prisons would avoid disrupting labor-management relations at existing institutions.⁷²⁸ Governor Thompson, however, was unwilling to allow the establishment of private prisons in Wisconsin. Thompson assured the prison unions that there would be no private prisons as long as he was governor.⁷²⁹ Now that Thompson is in Washington, calls to establish private prisons have been renewed. Supporters stress that private prisons will save money because their labor costs are significantly lower than public prisons.⁷³⁰ Current governor Jim Doyle has considered selling a state prison to a

⁷²⁵ Marc C. Duff, "Correction Privatization Generates Savings and Better Services," *Wisconsin Interest*, 1 January, 2003.

⁷²⁶ "Correction Privatization Generates Savings and Better Services," (2003).

⁷²⁷ "Correction Privatization Generates Savings and Better Services," (2003).

⁷²⁸ Steven Walters, "Consultant Suggests Privatizing 1 or 2 Prisons," *Milwaukee Journal Sentinel*, 11 January, 1997.

⁷²⁹ Jeff Mayers, "Corrections Officers Set to Fight Private Prisons," *Wisconsin State Journal*, 20 August, 1999.

⁷³⁰ "Correction Privatization Generates Savings and Better Services," (2003).

private company.⁷³¹ At the present, it is difficult to predict the future direction of Wisconsin prison privatization. There is little doubt, however, that privatization in Wisconsin has been quite extensive, it has faced stiff opposition that might have prevented the establishment of private prisons in the state itself, and that “privatization by addition” was the dominant mode of privatization.

Israel

The welfare state in Israel was inspired in its early years by the state’s socialist ethos. Its development, until the late 1970s, was based on the tenets of universality.⁷³² Since then, however, Israel has gradually moved away from universality in welfare state provision and away from its early neo-corporatist structure that included a strongly centralized labor organization.⁷³³ Since the first right-wing government (1977), subsequent governments have dismantled much of the state-owned industries and privatization has also affected the delivery of services. In recent years, the one time prime-minister and current minister of finance, Benjamin Netanyahu, has endorsed privatization as a preferred policy as part of a broader neo-liberal worldview.⁷³⁴

Education

The education system in Israel is separated into different religious and ethnic sectors. The only significant private education sector in Israel serves the Ultra-orthodox Jewish population. This educational sector is largely state-funded and its growth reflects the

⁷³¹ Scott Milfred, “Doyle Reconsiders Prison Deal,” *Wisconsin State Journal*, 4 December, 2003.

⁷³² Abraham Doron and Ralph M. Kramer, *The Welfare State in Israel: The Evolution of Social Security Policy and Practice*, (Boulder CO: Westview Press, 1991): 11-21.

⁷³³ Abraham Doron, *In Defense of Universality*, (Jerusalem: Magnes, 1996) (In Hebrew).

⁷³⁴ Amotz Asa-El, “What Next for Bibi-nomics?” *The Jerusalem Post*, 13 August, 2004.

growth of the Ultra-orthodox demographic in society and not a government decision to bolster private delivery. Aside from this special sector, public delivery of schooling is the rule.

Interestingly, even without any significant privatization in Israeli education, an opposition to privatization in education has evolved. The opponents of privatization fear that recent government initiatives to expand school autonomy (principals would have control over school budgets and part of the core curriculum) would ultimately lead to a competition between schools and contracting-out with for-profit management companies.⁷³⁵ Some opponents, from poor neighborhoods, have organized against increased school autonomy reasoning that schools in more affluent neighborhoods would be able to attract corporate sponsors giving them an unfair advantage over schools in poor neighborhoods.⁷³⁶ A recent government sponsored committee's report recommended greater school autonomy. The report was criticized as paving the way for privatization. The Chair of the committee, Shlomo Dovrat, however, has rejected accusations of privatization as baseless stressing his commitment to publicly provided education.⁷³⁷

Privatization of delivery (and funding) in Israeli education appears to have provoked a lively debate and a vocal opposition. Nevertheless, the different criticisms of privatization are in the form of "slippery slope" arguments and not condemnations of existing privatization initiatives. The latter are yet to materialize.

⁷³⁵ Marcelo Vexler, "The Education System is Moving Towards a Free Market," *Me'itsad Sheni* (in Hebrew).

⁷³⁶ Ina Friedman, "Lobbyists in the Hood," *The Jerusalem Report*, 27 August, 2001.

⁷³⁷ Ruthie Blum, "A Quick Study," *The Jerusalem Post*, 23 July, 2004.

Mental health

In 2002, 1,308 out of 5,439 psychiatric beds in Israel, 24 percent, were in the private sector.⁷³⁸ De-institutionalization has accelerated in Israel in recent years.⁷³⁹ In 2000, the legislature passed the Mentally Disabled Community Rehabilitation Act that was intended to expand the use of community care for the seriously mentally ill.⁷⁴⁰ The number of inpatient beds in hospitals was falling even before the 2000 law: from 1993 to 2002, the number of psychiatric inpatient beds fell by 1,634 – over 23 percent. Concomitantly, from 1998 to 2002, the number of persons in community-based rehabilitation programs increased by 3,648 – a growth of 58 percent.⁷⁴¹

I do not have information, however, on the share of publicly funded beds in the private sector and only very partial information on temporal trends in the use of private contractors in community care. Without these figures, it is difficult to say whether de-institutionalization has resulted in privatization as was true of the Massachusetts mental health system, for example. There has been an absolute and relative growth, however, in the budget share allocated to contracting out for community rehabilitative services in the last three years (see table 6-3). Unfortunately, no figures are available for earlier years.

⁷³⁸ Israel Center Bureau of Statistics, "Table 6.6: Beds in Hospitals, by Ownership and Type of Bed, 2002."

⁷³⁹ V. Baloush-Kleinman and M. Schneiderman, "System Flexibility in the Rehabilitation Process of Mentally Ill Disabled Persons in a Hostel that Bridges between the Hospital and the Community," *Israel Journal of Psychiatry and Related Sciences*, Vol. 40, 4 (2003): 274-282; A. Grinshpoon, Y. Shershevsky, D. Levinson and A. Ponizovsky "Should Patients with Chronic Psychiatric Disorders Remain in Hospital?" *Israel Journal of Psychiatry and Related Sciences*, Vol. 40, 4 (2003): 268-273.

⁷⁴⁰ Israel Department of Health, "2003 Mental Health Statistical Bulletin,"

<http://www.health.gov.il/units/mental/statistic.com> (In Hebrew).

⁷⁴¹ "2003 Mental Health Statistical Bulletin."

Table 6.3: Contracting out for rehabilitative services in Israel

	2001	2002	2003
Value in 2003 adjusted millions of Shekels	191.7	215	252.9
% of public mental health budget	14.6	16.1	17.6

Sources: Israel Department of Health, "Mental Health Statistical Bulletin," (2001, 2002, 2003).

There are, however, government statistics regarding sector-based provision for the mentally retarded that extend over more than two decades. It is often the case that mental health and mental retardation policy are closely linked, so it is not farfetched to suggest that trends in mental retardation could also shed some light on mental health delivery trends. In the case of Israeli mental retardation, the private sector share in the residential home market has steadily grown from 25 percent in 1980 to 48 percent in 2004.⁷⁴² The information available, although far from conclusive, suggests that privatization of mental health delivery is quite significant, and is expanding as a result of de-institutionalization.

Incarceration

In March 2004, the Israeli parliament approved one privately run prison that is to house 800 inmates.⁷⁴³ Currently, there are approximately 12,000 inmates in Israel, so with the opening of the private prison, the private sector would serve about seven percent of the prison population.⁷⁴⁴ The main motivation for establishing a private prison, according to government representatives, was overcrowding in the public prison system and the

⁷⁴² Israel Central Bureau of Statistics, "Table 7.7: Residents in Residential Facilities for Persons with Developmental Disabilities, Financed by the Ministry of Social Affairs." 2004 Abstract, http://www1.cbs.gov.il/shnaton55/st07_07.pdf, accessed 23 December, 2004.

⁷⁴³ Gideon Alon, "Knesset okays Prison For Profit in Negev," *Haaretz*, 24 March, 2004.

⁷⁴⁴ Yediot Ahronot, "Government Approves Privately Owned Prisons," *Globes*, 8 December, 2003.

projected lower costs of private prisons.⁷⁴⁵ The proposed legislation faced criticism from experts, civil right advocates, opposition members and even a member of the coalition that served on the parliamentary committee that debated the bill, but the government enacted the bill nonetheless.⁷⁴⁶ The privatization initiative in Israel has emerged on the backdrop of an overcrowding problem and a desire to cut costs. Furthermore, it takes the form of “privatization by addition”, as is true of prison privatizations in other political systems.

Healthcare

Since its creation in 1948, the NHS has been the symbol of the British welfare state: a universal and egalitarian healthcare system. Although private health insurance does exist, public healthcare serves most of the healthcare needs of the entire population. In this system, everybody is a stakeholder. Furthermore, the NHS is also a huge employer with 1.4 million employees, ranking as the world’s third largest employer.⁷⁴⁷ What does the size of the stakeholder’ constituency imply for privatization?

What might be considered privatization initiatives in the NHS started under Thatcher in the 1980s. Thatcher’s first two governments pushed forward an agenda of outsourcing services. In the NHS, however, clinical services were precluded. Ancillary services (e.g., meal services) were the primary target of outsourcing. As a result, non-clinical

⁷⁴⁵ “Knesset okays...” 2004; Guy Leshem and Uzi Dayan, “Somebody will Serve Time because of this,” *Maariv*, 30 April, 2004 (in Hebrew).

⁷⁴⁶ “Somebody will Serve Time because of this,” 2004.

⁷⁴⁷ “Body Snatchers; Britain’s National Health Service,” *The Economist*, 11 September, 2004.

employment in the NHS dropped from 260,000 in 1981 to 157,000 in 1990.⁷⁴⁸

Privatization of non-clinical services was expanded with time to include also more sophisticated services such as information technology, accounting and service planning.⁷⁴⁹

What was viewed by many as Thatcher's main privatization initiative waited until her third term as Prime Minister. In 1989, the government published the NHS White Paper *Working for Patients*. The paper set out to reform the NHS in a way that would make it more business-like in its operation (the reform was put into law in 1990). The reform established a purchaser-provider split in which health authorities (and later GP fundholders) purchased services from 300 hospital trusts. The hospital trusts were to compete for health authority patients amongst themselves. This mechanism created a quasi-market. The hospital trusts were to operate for the first time in a competitive market environment in which trusts that failed to attract clients could go under.⁷⁵⁰ This, however, did not constitute privatization because the private sector was not allowed to participate. The market was an internal public market. Nevertheless, the Labour Party and other opponents accused the government of privatizing the NHS.⁷⁵¹ Thatcher, indeed, would have been pleased if it were possible to introduce private providers into the NHS. She acknowledged, however, that the popularity of the NHS made any such radical reform politically unfeasible:

“If one were to recreate the National Health Service, starting from fundamentals, one would have allowed for a bigger private sector – both at the level of the

⁷⁴⁸ Pollock (2004), 38.

⁷⁴⁹ Pollock (2004), 45.

⁷⁵⁰ Eric J. Evans, *Thatcher and Thatcherism*, (London: Routledge, 2004), 66-69.

⁷⁵¹ Nigel Lawson, *The View from No. 11: Memoirs of a Tory Radical*, (London: Bantam Press, 1992), 615.

general practitioners (GPs) and in the provision of hospitals; and one would have given much closer consideration to additional sources of finance for health, apart from general taxation. But we were not faced by an empty slate. The NHS was a huge organization that inspired at least as much affection as exasperation (...) Any reforms must not undermine public confidence.”⁷⁵²

Thatcher was aware that she had to be very cautious in regard to her dealings with the NHS. Ahead of the 1987 elections, the media and the opposition focused on anecdotes related to NHS failures. The blame was put at the door of the conservative government.⁷⁵³ Nigel Lawson, the Chancellor, claimed that NHS reform was such a delicate issue that saying anything about it in the party manifesto, ahead of the 1987 elections, would have been disastrous. The British Medical Association was against any radical reform of the NHS, and Lawson was sure that the public would side with the professionals.⁷⁵⁴ Given these strong beliefs regarding the public’s response, it is of little surprise that the conservative government went no further in reforming the NHS than creating a market *within* the public sector.

Once in power, Labour phased out the NHS’ internal market. However, as was the case with the phasing out of Grant Maintained Schools in education, this early move was more than offset by subsequent policies. In 1999, the Minister of Health, Frank Dobson, announced the establishment of primary care groups/trusts. The trusts were comprised of all the general practices and community health staff in a given locale, and in 2003, the trusts became responsible for spending 75 percent of the NHS budget in their area. The motivating idea was to increase efficiency by offering local entities more responsibility

⁷⁵² Thatcher (1993), 607.

⁷⁵³ Earl A. Reitan, *The Thatcher Revolution*, (Oxford: Rowman & Littlefield Publishers Inc., 2003), 102.

⁷⁵⁴ Lawson (1992), 613-614.

and decision-making powers.⁷⁵⁵ This role was expanded even further in the Health and Social Care Act of 2003 that introduced the concept of Foundation Trusts. NHS hospitals and primary care trusts were to be made eligible for ‘foundation’ status. The foundation trusts are removed from the control of the Department of Health, they own their assets, and they can create their own pay scales and borrow on the private market.⁷⁵⁶ Most importantly, foundation trusts are free to enter into contracts with private sector companies. Although this reform has yet to be implemented, it clearly creates potential for further privatization.

As was the case in education, Labour also aggressively pursued PFI in the healthcare sector. As of November 2004, there were 31 completed and 81 signed PFI projects in the Department of Health.⁷⁵⁷ Under PFI contracts, ancillary staff are employed by the contracting company and not by the NHS. Labour actively worked to foster a relationship with the private sector, in general, and with the private health providers, in particular. In 2000, the government signed a concordat with the Independent Healthcare Association. In the concordat the government promised to make use of private providers – voluntary and proprietary – on a planned basis, not only as a backup to the public sector when public supply was insufficient. In this spirit, Blair ordered the cancellation of instructions given by the former minister of health, Frank Dobson, who directed hospital chief executives not to refer patients to private providers as long as there was sufficient capacity in the public sector.⁷⁵⁸ Finally, the government invited private companies to

⁷⁵⁵ Pollock (2004), 51-52.

⁷⁵⁶ Pollock (2004), 77.

⁷⁵⁷ PPP Forum, “Completed and signed projects,” www.pppforum.com, accessed 24 November, 2004.

⁷⁵⁸ Pollock (2004), 66-68.

establish several Diagnostic and Treatment Centers from which government would purchase routine hip, knee and cataract operations.⁷⁵⁹ The NHS is already purchasing such services from the private sector in an effort to shorten the long waiting lists for elective surgery. John Reid, the minister of health, speculated that these centers might perform as many as 15 percent of NHS funded operations.

While PFI continues the conservative privatization of ancillary services in healthcare, the creation of foundation hospitals and government encouragement of NHS planned purchase of certain clinical services from private providers creates the potential for significant privatization of core services in the future. To date, however, privatization is still quite modest. One study estimated the extent of publicly funded private delivery in 1998-99 at only 5 percent (when GPs are considered public employees).⁷⁶⁰ The share of privately delivered elective surgeries – probably the main privatization flashpoint – is also only a modest 5 percent.⁷⁶¹ Furthermore, the private sector response to the government's efforts to encourage the establishment of private Diagnostic and Treatment Centers has been disappointing. The government invited the private sector to establish 27 such centers. By early 2004, only two such centers have opened.⁷⁶²

Politically, the Labour government was able to get away with much more privatization than the previous Conservative governments could have even dreamt of pushing forward. This success is probably due, as is also true of privatization in education, to the way that

⁷⁵⁹ Pollock (2004), 68.

⁷⁶⁰ See IPPR (2001), 63.

⁷⁶¹ "Body Snatchers," 2004.

⁷⁶² Pollock (2004), 68.

major budget increases (about 6.1% a year) have mollified many potential critics among stakeholders. Also, the fact that Labour is not suspect, as the Conservative government was, of trying to dismantle the NHS, certainly helps.⁷⁶³ Yet, privatization proponents in Labour cannot completely ignore stakeholders that are displeased with recent privatization initiatives. The unions, which are important financial backers of the party, have been joined in their opposition to privatization by the British Medical Association – an important force in shaping stakeholder (read public) opinion on healthcare policy issues.⁷⁶⁴ Moreover, within the Labour Party itself, there is a steady increase in dissenting voices. First and foremost among these is the Chancellor Gordon Brown who has publicly stated that the NHS will remain public and has crossed swords with former health minister, Alan Milburn, on the issue of foundation trusts.⁷⁶⁵

The privatization of healthcare in England has many clear parallels with privatization in the other large domain – education. The main focus of privatization is not on core services, but on ancillary services. The privatization of ancillary services, however, does provide an opportunity for privatizers to gradually expand privatization from the periphery to the core (e.g., the expansion to information technology and even elective surgery). Centrist parties, Labour in this case, are in a more favorable position to pursue privatization than their right-wing counterparts because they face less political and stakeholder opposition. Another facilitating factor is an expanding budget. Crafted speech played a role in privatization of healthcare, as it did in education. Both Labour and Conservative governments have been quick to reject the term ‘privatization’ in relation to

⁷⁶³ Marion Roe, MP, June 21, 2002; Burns interview.

⁷⁶⁴ Celia Hall, “BMA Attack Labour’s ‘Wasteful’ NHS Reforms,” *The Daily Telegraph*, 29 June, 2004.

⁷⁶⁵ David Hughes, “Cabinet at War over Plans for Best Hospitals to Break,” *Daily Mail*, 1 May, 2003.

their projects. Recent conservative plans for creating a voucher program in healthcare have been dubbed “patient passports”, while Labour has made extensive use of the word ‘partnership’ to describe the greater involvement of private providers in the delivery of services.⁷⁶⁶ Finally, current privatization rates in healthcare are quite modest. The NHS is still alive, and healthcare provision in England is still predominantly public.

Foster Care

The care of children that do not have a family, children whose family cannot adequately care for them, or children that suffer from neglect or abuse at home, has been the responsibility of the state for the greater part of the twentieth century and even before.⁷⁶⁷

The extent of state intervention gradually expanded from care of orphans to support for problem families and the removal of children from homes where they suffered neglect and abuse. The state has made extensive use of foster care: the care of children in out-of-home living arrangements.⁷⁶⁸ In both the United States and in England, the non-profit (or voluntary) sector cooperated with the state in the delivery of foster care services.

Nevertheless, in the post World War II era in England, local authorities developed into the primary providers of foster care services.⁷⁶⁹ Similarly, in the United States, the federal government’s reluctance to fund private providers strengthened the role of the public sector in the delivery of child welfare, in general, and foster care, in particular.^{770 771}

⁷⁶⁶ Helene Mulholland, “Tory Health Policy Condemned,” *The Guardian*, 22 March, 2004.

⁷⁶⁷ Nigel Parton, “Ideology, Politics and Policy,” in Olive Stevenson (ed.) *Child Welfare in the UK*, (London: Blackwell Science, 1999), 3-21; Marguerite G. Rosenthal “Public or Private Children’s Services? Privatization in Retrospect,” *Social Service Review*, Vol. 74, 2 (June 2000): 281-305.

⁷⁶⁸ Patrick A. Curtis, “Introduction: The Chronic Nature of the Foster Care Crisis,” in Patrick A. Curtis, Grady Dale Jr., and Joshua C. Kendall (eds.), *The Foster Care Crisis: Translating Research into Policy and Practice*, (Lincoln: University of Nebraska Press, 1999): 1-16.

⁷⁶⁹ “Ideology, Politics and Policy,” (1999).

⁷⁷⁰ “Public or Private Children’s Services,” (2000).

United States

The shift towards greater private delivery of foster care in the American States began with the passage of laws on the federal level that allowed states to use federal dollars for contracting with nonprofit organizations.⁷⁷² It is clear that these changes have spurred states to make greater use of the private sector in the provision of foster care services, although it is difficult to say by how much. Privatization of child welfare services in the 1970s was, to a great extent, a product of the overall expansion of these services.

Expansion did not necessarily come at the expense of existing public services. Child welfare services enjoyed a substantial growth in government funding from the 1960s into the early 1980s that allowed contracting to expand without a concomitant decline in the public sector.⁷⁷³

During the 1980s in the United States, privatization of child welfare services became part of a larger privatization trend that was often motivated by a combination of ideology and cost containment considerations. Child welfare privatization expanded rapidly during these years. Jeffrey Greene found in a survey of 596 American cities that the average privatization level of child welfare services, between 1982 and 1992, rose a staggering 175 percent; up from 12 Percent in 1982 to 33 percent in 1992, a greater change than in

⁷⁷¹ The personnel in foster homes, however, were always private individuals who received funding from the state and not public employees. The public sector was in charge of removal of children from problem environments, investigations, placements, monitoring and certification of foster homes. Privatization has transferred many of these recently public functions to private agencies (Phone interview with Marguerite Rosenthal, Salem State College, 21 November, 2004).

⁷⁷² The most important of these laws were amendments to the Social Security Act in 1967 that allowed states to contract with nonprofits using federal dollars and the passing of Title XX of the Social Security Act in 1975.

⁷⁷³ "Public or Private Children's Services," (2000).

any other Health & Human Service domain.⁷⁷⁴ A major driving force for privatization in child welfare services during these years was the administrative preoccupation with cost containment coupled with the belief that private delivery would be less expensive than public delivery.⁷⁷⁵

Today, private agencies are responsible for a large share of foster care placements in Massachusetts. A private Managed Care Entity, Commonworks, has been established in 1996 to develop private service delivery networks and coordinate part of the foster care network.⁷⁷⁶ In Texas, as of 2003, private (nonprofit, for-profit, and faith based) agencies accounted for about 73 percent of all foster care placements in the state and for 90 percent of foster care payments, meaning that the Texas foster care system is primarily outsourced today.⁷⁷⁷ Much of the growth of the private sector is quite recent. Since 1999, the number of private licensed beds has increased by 34 percent, while the number of public beds has decreased by 10 percent.⁷⁷⁸ Furthermore, Carole Keeton Strayhorn, the Texas Comptroller, has recommended that the state relinquish its direct delivery role altogether. The Comptroller's report predicts that full privatization of delivery would

⁷⁷⁴ Jeffrey D. Greene, "How Much Privatization? A Research Note Examining the Privatization by Cities in 1982 and 1992," *Policy Studies Journal*, Vol. 24, 4 (Winter 1996): 632-640.

⁷⁷⁵ Sheila B. Kamerman and Alfred J. Kahn, "Privatization, Contracting, and Reform of Child and Family Social Services," Prepared for the Finance Project, June 1998, <http://www.financeproject.org/private.htm> (accessed 15 November, 2004).

⁷⁷⁶ Charlotte McCullough and Barbara Schmitt (Child Welfare League of America), "Managed Care and Privatization: Results of a National Survey," *Children and Youth Services Review*, Vol. 22, 2 (2000), 117-130.

⁷⁷⁷ Texas Comptroller of Public Accounts, "Forgotten Children: A Special Report on the Texas Foster Care System," April 2004, <http://www.window.state.tx.us/forgottenchildren/execsumm/>, accessed 18 November 2004.

⁷⁷⁸ "Forgotten Children," (2004), Exhibit 2.

result in savings of over \$51 million in three years and would reduce the number of state employees by over 900.⁷⁷⁹

England

In England, there was always a mixed economy of social care in child welfare services, with voluntary providers working closely with the public sector in the provision of foster care.⁷⁸⁰ In recent years, local authority social service departments, which are charged with child welfare, have increasingly entered into formal contract agreements with Independent Fostering Agencies.⁷⁸¹ These Independent Agencies, circa 2000, account for 11 percent of foster care placements in England and Wales. No less importantly, with the blessing of the Labour government, they are expanding rapidly: no less than 60 percent of these agencies were created in the three years between 1996 and 1998.⁷⁸²

How similar is the case of child welfare services/foster care to the other small domains? Privatization of child welfare services appears to be similar in at least three respects to mental health privatization and, to a lesser degree, to privatization of incarceration. First, privatization in foster care was both rapid and extensive, reaching double digit figures in all three political systems. Second, cost containment was an important consideration for privatizers in foster care, at least in the United States. Third, privatization in foster care did not attract much public attention in any of the political systems. Newspaper surveys

⁷⁷⁹ "Forgotten Children," (2004).

⁷⁸⁰ Pauline Hardiker, "Children Still in Need, Indeed: Prevention Across Five Decades," in Olive Stevenson (ed.), *Child Welfare in the U.K.: 1948-1998*, (London: Blackwell Science, 1998), 42-61.

⁷⁸¹ Clive Sellick and J. Connolly, "Independent Fostering Agencies Uncovered," *Child and Family Social Work*, Vol. 7 (2002): 107-120.

⁷⁸² "Independent Fostering Agencies Uncovered," (2002).

of foster care policy in general, let alone foster care privatization, resulted in very few articles.⁷⁸³ Without primary research it is impossible to determine whether privatization faced any real opposition, or conversely enjoyed support, in this domain, and whether any privatization initiatives were ever defeated or slowed down.⁷⁸⁴ What is clear is that the case of foster care certainly does not undermine any of the major conclusions of this study.

Pensions

Privatization in the case of transfer programs is fundamentally different than privatization in the delivery of services. Privatization in transfers takes one of two forms. First, the focus of privatization in transfers could be on the decrease in the level of state-mandated pension coverage. In such cases, the target of privatization is the *funding* of pensions. A second type of privatization occurs when the *administration* of transfer funds is partially or wholly shifted from the state to private organizations. This type of privatization does not entail that transfer recipients' state-mandated entitlements decrease: contributions and benefits could remain constant. What changes is that the administration of the program is shifted to private pension funds. In some cases, responsibility for decisions about how to invest the pension revenue is transferred to the individual recipients themselves.

⁷⁸³ For a rare media reference and critical account of privatization in child welfare services see: Editorial, "The Deficient DSS," *The Boston Globe*, 31 January, 1999.

⁷⁸⁴ At least in the case of Massachusetts, it appears that that privatization was not confronted by any politically significant opposition (Rosenthal interview).

England

In England, there is a two-tiered system of pensions. The bottom tier consists of a flat-rate Basic Pension that offers a relatively low level of benefits. There is also an upper tier of pensions that consists of a mandatory contribution-based pension – the State Earning-Related Pension Scheme (SERPS).⁷⁸⁵ SERPS was established in 1975, and had very little impact on those that were already retired or were close to retirement, because these groups did not have the opportunity to make significant contributions to the new program and, therefore, were not entitled to significant benefits. Younger cohorts had more of a stake in SERPS, but there were many exceptions. SERPS allowed workers to ‘contract out’ of the program and join private pension schemes that had already existed for some time in Britain.

A short while after Thatcher came to power, the government changed the indexation system for Basic Pensions. Previously, the Basic Pension was indexed to the growth in average national earnings or to prices, whichever was higher. The 1980 Social Security Act changed this by indexing the pension only to prices. Because earnings rise faster in a growing economy than prices, this meant that the rate of growth of the Basic Pension was significantly decelerated, leading to greater public reliance on private alternatives. Opposition to this change was meager. The nature of the reform was subtle, a change in indexation rules, so the public did not fully appreciate the significance of the reform.

⁷⁸⁵ The description of the British pension system is based on Pierson’s analysis of pension retrenchment in *Dismantling the Welfare State?* (1994), 53-73.

In 1985, Thatcher's government published a green paper that proposed to gradually phase out SERPS and replace it with mandatory funded (SERPS operated on a pay-as-you-go basis) occupational schemes or with a personal pension. The government, however, failed to anticipate the intensity and comprehensiveness of the opposition. The scheme was strongly opposed by the Labour Party and unions, but the opposition – to the government's dismay – did not stop there. Employers were less than excited about the suggested privatization because they realized that moving from a pay-as-you-go pension system to a funded one would create a problem of double payment.⁷⁸⁶ The Council of British Industry, as a result, opposed the government plan. Faced with broad opposition, the government backed away. A frontal assault on SERPS proved to be too politically damaging. In the 1986 Social Security Act, the government made no mention of abolishing SERPS, but it did cut benefits and, at the same time, increased incentives for workers to contract out of SERPS into private pension schemes. There was little opposition to these changes because Labour was satisfied by defeat of the government's earlier plans to abolish SERPS and paid little notice to the new, much less radical, reforms. The cut in benefits, however, increased worker reliance on supplementary private schemes and the new incentives for opting out of SERPS to the mandatory private schemes were very successful. Today, about 80 percent of male and 70 percent of female full time workers are enrolled in private occupational schemes or personal pensions.⁷⁸⁷

⁷⁸⁶ In funded pension systems, workers (and employers) contribute specifically towards the pension account of an individual worker. These funds are not used to pay for other workers' pensions. In a pay-as-you-go system, in contrast, workers' contributions are used to fund the pensions of contemporary pensioners, and their own pensions would be funded by the next generation of workers. Moving from a pay-as-you-go system to a funded system involves a problem of double payments. Workers (and employers) would have to pay for contemporary pensioners, assuming that the state respects its commitments to these pensioners, and contribute to their own funded accounts.

⁷⁸⁷ Senior Network, "Pensions Fiasco – go Back to SERPS?"

<http://www.seniornetwork.co.uk/pensions/serps2.htm>, accessed 27 November, 2004.

Thatcher's government managed to privatize much of the public pension program through both types of privatization mentioned above. By changing the Basic Pension indexation formula and cutting SERPS benefits in 1986, the government reduced the financial share of government-mandated pensions in the overall pension market. By strengthening incentives for opting out of SERPS to private schemes, the government managed to increase the role of private funds in state-mandated pensions. While a direct assault on public pensions was futile, indirect methods that relied on stakeholder inattention to the details of funding formulas proved very successful in promoting privatization.

United States

In the United States, Reagan's administration moved early to diminish government pension commitments. Reagan was personally supportive of a privately-based pension system and he gave the green light to the director of the Office of Management and Budget, David Stockman, to propose cuts of \$45 billion in Social Security that would have, among other things, sharply reduced benefits to 1.4 million Americans in early retirement. The proposal was introduced in May 1981. Its visible and immediate effect on the elderly generated significant opposition from all sides of the political map. The Senate rejected any such cuts by a vote of 96-0. In light of the proposal, Democrats portrayed Reagan as the enemy of the elderly. From that point on, Reagan was reluctant to contemplate any policy that would challenge social security.⁷⁸⁸

⁷⁸⁸ Pierson, (1994), 65-69.

In recent years, various political actors, first and foremost among them President Bush, have supported different privatization plans for social security pensions. The relevant backdrop is the perceived social security crisis. According to a 1997 report of the Social Security Board of Trustees, trust funds would be exhausted by 2029.⁷⁸⁹ These dire predictions, although not shared by all, have provoked a range of reform proposals. George W. Bush, in the 2000 election campaign, proposed that the new cohorts of workers would be able to divert a small share of their social security contributions to 'Individual Retirement Accounts', which they will be able to invest as they see fit in the stock market. Bush argued that workers would benefit from such a plan because the stock market offers higher returns than social security funds. Furthermore, proponents of the plan claimed that it would offer workers greater choice and control.⁷⁹⁰ In Bush's first term in the White House, there were no real attempts to reform social security in this way. From a political standpoint it was doubtful whether any legislation to this effect could pass because support from the Senate was very much in question. In the 2004 campaign, the plan was resuscitated and following his victory in the elections, Bush promised to move forward on Social Security reform.⁷⁹¹

Whether Bush will be able, or even try, to push through Congress his plan for individual retirements accounts is an open question. There is some room for optimism for the plan's proponents. The individual retirement account plan does not appear to be perceived by the public as an attack on social security. President Bush has twice been elected on a

⁷⁸⁹ Max J. Skidmore, "Why Privatization is not on the United States' Social Security Policy Agenda," in John Dixon and Mark Hyde (eds.), *The Marketization of Social Security*, (Westport CT: Quorum Books, 2001), 187-203.

⁷⁹⁰ Editorial, "Rocking the Retirement Boat," *Boston Globe*, 16 May, 2000.

⁷⁹¹ Peter Grier, "Bush II Agenda Takes Shape," *Christian Science Monitor*, 5 November, 2004.

platform that includes this plan. Furthermore, in a series of Zogby public opinion polls (sponsored by the pro-privatization Cato institute), conducted between February 1998 and July 2002, support for private accounts was consistently higher than opposition.⁷⁹² Part of Bush's success in pre-empting widespread opposition to privatization could be attributed to his consistent avoidance of the p-word – privatization – in reference to the private account plan. Although a recent article in the *New York Times* claimed that Bush did speak explicitly of his plans to privatize social security in a confidential luncheon with supporters, in public appearances Bush has been careful to deny that private accounts were a form of privatization.⁷⁹³

There are, however, good reasons to doubt whether Bush would be able to see the plan through. The 'double payment' problem in moving from a fully pay-as-you-go system to a partially funded system has not been addressed in Bush's plans. Some social security analysts argue that such a transition would require a cut in the benefits to future retirees, a politically risky move that many Republican members of Congress would rather avoid.⁷⁹⁴ Furthermore, the AARP has voiced its opposition to the plan.⁷⁹⁵ Even for a president that enjoys support in Congress, a face-off against the largest membership-based advocacy could result in defeat.

⁷⁹² John Zogby et al., "Public Opinion and Private Accounts: Measuring Risk and Confidence in Rethinking Social Security," Cato Project on Social Security Choice, 6 January, 2003.

⁷⁹³ Ron Suskind, "Without a Doubt," *New York Times*, 17 October, 2004.

⁷⁹⁴ "Bush II Agenda Takes Shape," 2004.

⁷⁹⁵ Robert Pear, "AARP Opposes Bush Plan to Replace Social Security with Private Accounts," *New York Times*, 12 November, 2004.

The difficulty in pension privatization appears to share some of the characteristics of privatization in large service domains. The large stakeholder constituency cannot be disregarded by a prudent politician. If stakeholders take a strong stand against privatization, policymakers are forced to retreat. Nevertheless, there is also a significant difference. Privatization in service programs applies to very tangible institutions: public sector agencies to which recipients go to receive services. In contrast, privatization in transfers applies to methods of administering contributions and benefits, something that is much less 'real' to recipients. As a result, it is much easier to obfuscate privatization in a transfer than in a service program. This difference could help explain why privatization in British pensions has been much more extensive than privatization in large service domains. Be that as it may, there is also a significant difference in privatization rates between the pension programs in Britain and the United States. The differences between the success of privatization efforts in Britain and in the United States could be attributed to at least two factors. First, in Britain, SERPS was established relatively late, in 1975, so reform did not require considerable disruption of existing entitlement payments. Privatization in the United States, in contrast, must take into consideration its effects on a large group of retirees who are heavily invested in the program. Pierson argues that, in general, for this reason, it is far more difficult to reform a 'mature' program, as is true of American social security, than a relatively new program, such as SERPS. Second, in Britain, from the very beginning, there existed a possibility of opting out of SERPS to private accounts. No similar arrangement exists in American Social Security. This made privatization easier in the British case because the government could indirectly bring

about privatization by strengthening recipient incentives for shifting from SERPS to the private alternatives.

Summary

The brief, and unavoidably superficial, survey of the additional case studies offers some support for the main conclusions of this study. First, privatization in the large service policy domains (healthcare in England, education in Wisconsin and Israel) is very limited and it faces broad opposition. In the one case in which the opposition to privatization was not very strong, Wisconsin charter schools, the relative silence of the opposition could be attributed to the fact that stakeholders have extensive control over the charter approval process and have used this control to prevent private sector involvement in charter schools. The case of pension privatization is somewhat different than the other cases. In England, there was an extensive privatization of pensions. Although such extensive privatization in a large domain does challenge the appropriateness of the 'domain size' proposition to transfer programs, the pension case studies do support two other conclusions. First, the pre-existence of private arrangements greatly facilitates privatization. Second, frontal assaults on the public system in a large domain are doomed to failure because of the tremendous opposition they provoke. Privatization in large domains, including transfers, is best pursued through the use of obfuscation techniques. The use of such methods is actually easier in transfer programs than in service programs.

Second, privatization in small policy domains (foster care in the three political systems, and mental health and incarceration in Wisconsin and Israel) has been considerably more

extensive than in the large domains. In some of these cases, the opposition to privatization was weak or even non-existent. As was the case with privatization in the 1980s in Massachusetts' mental health care and privatization in English mental health care, the absence of opposition, in the additional mental health cases, could be attributed, in part, to the effects of de-institutionalization. In foster care, there were also considerable structural reforms that could have facilitated concurrent privatization. However, the lack of well-organized recipient-based advocacy groups – groups that could evaluate policy and mobilize accordingly – was also a factor in explaining the absence of opposition voices. In the case of incarceration privatization, in both Wisconsin and in Israel, there were signs of opposition to privatization. It is not clear, however, to what extent this opposition helped shape policy outcomes.

Third, a central motivation for privatization in small domains, unlike large service domains, was the imperative of cost-containment. Supporters of prison privatization never fail to appeal to claims of lower per-prisoner costs in private prisons. Likewise, the privatization of foster care in the United States was often motivated by the presumably lower costs in the private sector.

Fourth, privatization by addition is more common than privatization by substitution, as is demonstrated in the prison privatization case in Wisconsin and charter school expansion in the same state. Furthermore, the related logic that privatization is easier during a budgetary expansion than during a budgetary contraction, has also underpinned privatization efforts in the healthcare domain in England under the Labour government.

Fifth, privatization patterns are not greatly influenced by the political system. In both Wisconsin and Israel, the privatization pattern generally followed the pattern witnessed in the nine in-depth case studies. Privatization in mental health was considerably higher than in the other domains, while privatization in education was lower. Given Wisconsin's history of privatization in education and the fact that Israel's welfare state and political system is fundamentally different from those of the United States and England, this is by no means an obvious finding.

Sixth, privatizing policymakers have made extensive use of crafted speech in their promotion of privatization in large policy domains: Conservatives in England speak of "healthcare passports" instead of privatization in English healthcare; Labour, similarly, makes extensive use of the term 'public-private partnerships'; and Bush refers to 'private retirement accounts' to describe his privatization plans for pensions. In all these cases, politicians find it prudent not to refer to their initiatives as privatization, preferring the use of a less loaded term.

Finally, in a large domain, privatizing policymakers have also moved from periphery to core. The progression of privatization in English healthcare has followed this course. Early privatization efforts focused exclusively on contracting out ancillary services. With time, the conservatives have increasingly expanded such contracts to more sophisticated services. Labour has gone even further. Privatization has expanded on a *planned basis* to core clinical services – primarily elective surgery.

While the additional case studies are not extensive enough to offer conclusive support for the propositions derived from the in-depth case studies, they do suggest that these conclusions cannot be treated as merely case-specific findings that have little relevance to the broader universe of privatization of service delivery.

Implications for service' recipients and the future direction of privatization

I would like to end with some thoughts on the implications of this study's main conclusions for service recipients and the possible future direction of privatization of delivery.

Effects on service recipients

There is an intense and very emotional debate going on regarding the merits of privatization, in general, and privatization of delivery, in particular. On the one hand, there are privatization proponents that strongly believe in the superiority of market mechanisms over state control. Privatization, according to these supporters, would greatly improve the efficiency and responsiveness of services, to the benefit of all recipients. On the other hand, are opponents that argue that private delivery is hazardous because it puts profits over people, it undermines the services' democratic accountability and market mechanism undermine non-material incentives for providing services that are the backbone of a true public service. In between the two ends, one can find a wide range of views that have also featured extensively in this debate. I, however, would rather not plunge into the general debate. Instead, I will say a few words about what the specific conclusions of this study could imply for service recipients.

I argue that due to discrepancies in stakeholders' political clout across policy domains, privatization in small domains would be more extensive than privatization in large policy domains. Is this a good thing for service recipients? I believe that this pattern should be

of some concern for three reasons. First, it is not to the advantage of recipients that privatization prospects primarily depend on political considerations and not on a pragmatic professional evaluation of the appropriateness of privatization in a given service program. Recipients may experience privatization in cases in which it is clearly inappropriate as they may be denied private services in cases in which private delivery would have improved the overall service.

Second, and more specifically, small domains that serve socially marginal populations (e.g., the mentally ill, prison inmates, children without a stable home) are in at least one sense a less appropriate target for privatization than large domains in which a large share of the public are stakeholders. For privatization to work properly, private providers require oversight. Otherwise, there will be contractors that will take advantage of the lack of oversight to lower the costs, at the expense of quality, of their service. Unfortunately, it is precisely in small domains that oversight is likely to be weakest. Small domains, because of their weak political standing, tend to be chronically under-funded. In order to make ends meet, agencies are required to cut their administrative “overhead” costs. Far too often, the oversight function is one of the first targets for cuts. In large domains, the large stakeholder constituency is better placed politically than stakeholders in small domains. Thus, stakeholders in large domains are better able to pressure the state into properly funding oversight, especially when things start going wrong.

Third, in small domains, stakeholders always face the problem of getting their message across to policymakers in an effective way. Privatization could aggravate this problem.

First, privatization tends to fragment the delivery system. Instead of one unitary provider, recipients face numerous distinct organizations. Recipients that are served by different contractors are likely to face a set of different problems. These differences could discourage common organization, something that would undermine advocacy even for common goals. Second, in the pre-dominantly public system, unions were a central actor in the advocacy coalition. It is unclear whether private provider associations can replace unions in this crucial role. Furthermore, in mixed delivery systems, tensions between unions and relatively new private provider organizations could undermine the coherence of the advocacy coalition.

This dissertation also stresses the significance of institutional restructuring as a window of opportunity for privatization of delivery. The linkage between institutional restructuring and privatization should be of some concern to service recipients. Radical restructuring means radical upheavals for service recipients. Obviously, under such circumstances, transitions to a new system require major adjustments and do not proceed smoothly. Adjustment difficulties are compounded when privatization is added into the mix. From a purely managerial-professional perspective, it makes sense to undertake such significant reforms at different times to lessen the stress at one given point in time on the service system and on the recipients. Unfortunately, the logic of privatization requires privatization to piggyback on some other radical reform, thus making for a very difficult transition period indeed.

For the reasons stated above, service recipients, particularly those in small policy domains have reason for concern regarding privatization. While privatization holds the promise of improved services, it could also weaken already politically frail advocacy coalitions, it might be introduced in systems where oversight functions are seriously deficient, and its introduction could coincide with other radical reforms, making for a very rough adjustment period for recipients. I do not present these implications in order to provide more ammunition to anti-privatization campaigners. Nevertheless, these concerns should be taken into account in practical evaluations of privatization.

Future scenarios

In what follows, I will speculate on the long-term future direction of privatization of delivery. There are three possible scenarios: things will stay as they are, there will be a major expansion, or there will be a rolling back of private delivery.

No major changes

In this scenario, privatization of delivery continues to follow the present pattern of relatively extensive privatization in small domains, and only limited privatization in large domains. Privatization in the large domains will never be able to make a major breakthrough for the reasons specified in this dissertation. Opposition will be too powerful. On the other hand, the opposition – with time – would accept the existence of a small private sector, so major reversals would also be unlikely. In small policy domains, private delivery will become prevalent, but it is unlikely that it would crowd out public

delivery altogether. Most governments would want to have some public delivery capacity in case of major private provider failure.

Expansion

A second option is that privatization would accelerate over time. This study offers at least three reasons for expecting this to be the case. First, radical institutional restructuring seldom happens, but when it does, it opens a window of opportunity for privatization. If privatization entrepreneurs wait long enough, they could take advantage of such opportunities in incarceration, education and various other domains.

Second, I argue that the influence of private providers over the privatization process is not static. It grows with the initiation and expansion of privatization. This trend might imply that privatization would be slow and difficult in its first years, yet gradually become easier because of the increasing support that privatization receives from the private sector. Hence, we should expect privatization not only to grow, but also to accelerate. There is also a possibility that the privatization process would reach a tipping point, in which the balance of power would shift from the public sector stakeholders to private sector stakeholders, and as a result, there would be a major jump in privatization rates.

Third, much of the privatization that takes place in the large domains is achieved by the use of a combination of obfuscation methods. One might expect private entrepreneurs to

refine these methods over time, thus finding ways of pre-empting opposition. Progress of this sort would be slow, but expansion would be continuous.

Reversal

There are several reasons why we might expect a rolling back of privatization. First, as discussed in the previous section, privatization of delivery could have a number of adverse effects on service recipients. This could create a backlash among recipients that would ultimately bring politicians to roll back private sector involvement.

Second, in the present situation, most privatization takes place in programs that serve marginal populations. Such programs tend to be under-funded and, consequentially, the programs are far from successful in addressing many of the problems they set out to solve. Private providers, therefore, might be in the unenviable position of working under conditions in which they have little chance of succeeding. Although the reason for failure could be insufficient funding, many critics would lay the blame at the door of private providers. Privatization would be associated with failed programs, and the outcome would be a drop in both public and political confidence in private providers' ability to do a good job. The end result could very well be the termination of some existing private delivery arrangements.

Third, the fact that privatization is mainly taking place in programs that are suffering from chronic under-funding, could have other implications as well. Private providers often need to make a profit, or at the very least, must break even. In small domains, with

major funding problems, profit margins are necessarily thin. In bad economic times, it is often small domains that are the first to experience painful cuts. In such a state of affairs, private providers are extremely vulnerable. Even in good times, profit margins are slim. In bad times, private providers could fall deep into the red if the state does not compromise on the level of services provided. Initial enthusiasm regarding privatization-related business prospects could give way to a more sober assessment and private providers would leave service delivery in droves.

Evaluation

None of the above scenarios is improbable. There are also reasons to doubt each of the three. The first scenario assumes that the opposing political forces would arrive at a status quo and the public-private mix would reach equilibrium. There are, however, many other factors (e.g., the rise to power of a strong supporter or opponent of privatization, institutional restructuring) that could jolt the private-public delivery status quo at any given time. 'Static' is an adjective that is seldom associated with the public-private delivery mix.

The expansion scenario fails to take into account countervailing trends. While privatization proponents perfect obfuscation methods, privatization supporters are becoming increasingly aware of the need to focus stakeholder' attention on the privatization elements in quasi-privatization and to win the rhetorical struggle over privatization – a struggle that frames the way the public and stakeholders think about these issues. Although the power of private providers grows over time, it is also

reasonable to assume that with the growth of the private sector, more stakeholders would become aware of the threat of privatization and join the opposition. Finally, there is no reason to assume that institutional restructuring can be used exclusively by privatization entrepreneurs. Opponents of privatization could plausibly use such restructuring to roll back existing private delivery.

The reversal scenario over-values the political significance of small domains. While it could be true that stakeholders would grow increasingly dissatisfied with private provision (for good or bad reasons), this dissatisfaction does not directly translate into political action. Policymakers, especially in the United States, might be reluctant to expand the public sector at the expense of the private sector, and small domain stakeholder pressure would probably not be enough to get them to do it. As for the viability of the private sector, the Massachusetts mental health care case suggests that the state recognizes the need to keep private providers financially afloat by not cutting rates too far.

As I see it, the public-private mix is constantly in flux, but changes are usually incremental, and the direction of change is not constant. What we are witnessing is a pendulum motion. Its speed and extent varies across domains. It is impossible to predict at what point the pendulum will change direction, as it was difficult for commentators in the 1960s to foresee the conditions under which the public sector would stop its expansion. In the foreseeable future, privatization of delivery will probably continue its expansion, albeit in a slow and uneven way.

Appendix A: List of Interviewees

Helmut Anheier, director of the Centre for Civil Society, London School of Economics, June 19, 2002.

Timothy App, former Deputy Commissioner in Massachusetts Department of Correction, February 18, 2004 (phone interview).

Sara Bachman, Boston University School of Social Work, January 16, 2003.

Jonathan Baume, General Secretary of the FDA (civil service union – England), June 27, 2002.

Chris Beales, Employment Forum, CAN (England), February 6, 2003.

Thomas Birmingham, former President of Massachusetts State Senate, October 20, 2003.

Ann Blackmore, NCVO Policy Unit, February 13, 2003.

Deborah Blumer, Massachusetts State Representative, April 16 2003.

Margaret Bolton, former NCVO Policy Unit and Policy and Innovation Unit at Prime Minister's Office, July 10, 2002.

John Bowis, former Minister responsible for mental health, December 9, 2003 (phone interview).

Carolyn Boyle, Coordinator for the Coalition of Public Schools in Texas, December 18, 2003 (phone interview).

Jim Branson, Texas State Employee Union (TSEU), January 16, 2004.

John Bridger, Business Development Manager for Cambridge Education Associates (England), January 31, 2003 (phone interview).

Andrew Brotman, NYU School of Medicine, January 14, 2003.

Tania Buchardt, CASE, London School of Economics, June 19, 2002.

Simon Burns, MP and former Minister responsible for mental health, July 3, 2003.

Jim J. Callahan, former Massachusetts Department of Mental Health Commissioner, November 27, 2002.

Elaine Carpenter, National Alliance for the Mentally Ill, Wisconsin, 16 November 2004 (phone interview).

Danette Castle, Chief Executive Officer of Lubbock Regional Community Mental Health and Mental Retardation Center (Texas), April 28, 2004 (phone interview).

Con Chapman, President of the Coalition for Parental Choice in Education (Massachusetts), September 10, 2003.

Bill Clayton, former Texas House Speaker, January 8, 2004 (phone interview).

Neil Cleeveley, Trade Union Conference Policy Officer, June 27, 2002.

Cliff Cohn, SEIU local 509, February 28, 2003.

Peter Costanza, Staff Attorney for Massachusetts Correctional Legal Services, March 2, 2004 (phone interview).

Chris Counihan, Independent Managed Care Consultant and former Executive Director of the Massachusetts Alliance for the Mentally Ill, October 13, 2003.

Phillip Craig, Senior Policy Adviser, Confederation of British Industry (England), July 2, 2002.

Jessica Crowe, Community Care and Social Services at the Local Government Information Unit (England), January 28, 2003 (phone interview).

Brother Richard Daly, Executive Director of Texas Catholic Conference, January 13, 2004.

Valerie Davie, MP, July 11, 2002.

King Davis, Director of the Hogg Foundation (Texas), January 21, 2004.

Brian Dawe, Executive of Corrections USA (union), October 13, 2003 (phone interview).

Nicholas Deakin, former Chair of the Independent Commission on the Future of the Voluntary Sector in England, June 20, 2002.

Paula Decker, Charter Schools Consultant, Wisconsin Department of Public Instruction, November 18, 2004 (phone interview).

Michele Deitch, Attorney and Consultant, Center for Criminal Justice Initiatives (Texas), December 4, 2003 (phone interview).

Martin DeLeon, Texas Association of School Boards, January 5, 2004 (phone interview).

Frank Dobson, MP and former Secretary of Health, February 5, 2003.

Michael Dukakis, former Massachusetts Governor, September 17, 2004.

Jim Dunnam, Texas State Representative, January 20, 2004 (phone interview).

Bill Edgerly, founder of CEOs for Fundamental Change in Education (Massachusetts), April 23, 2004.

Eileen Elias, former Massachusetts Department of Mental Health Commissioner, February 28, 2003 (phone interview).

Beth Epps, Executive Director of Adapt (Texas), January 29, 2004 (phone interview).

Roy Ettlinger, CEO of Arbour Health System (Massachusetts), April 13, 2004 (phone interview).

David Evans, Executive Director of Travis County Mental Health and Mental Retardation Center (Texas), January 21, 2004.

Michael Fair, former Commissioner of Massachusetts Department of Correction, March 12, 2004.

Jessica Farrar, Texas State Representative, March 4, 2004 (phone interview).

Susan Fendell, Senior Attorney for Massachusetts Mental Health Legal Advisors, March 13, 2003.

Toby Fisher, Executive Director of Massachusetts Alliance for the Mentally Ill, December 17, 2003.

Betty Funk, President of Mental Health and Substance Abuse Corporations of Massachusetts. September 29, 2003.

Melanie Gantt, Public Policy Director for Mental Health Association of Texas, December 19, 2003 (phone interview).

Sandra Gidley, MP, January 23, 2003.

Scott Gilmore, Chief of Staff for Ray Allen, Chair of Texas House Corrections Committee, February 10, 2004 (phone interview).

Mike Gross, Texas State Employee Union (TSEU), January 16, 2004.

Kent Grusendorf, Chair of Texas House Public Education Committee, January 21, 2004.

Julie Haeber, Texas State Representative John Davis's Chief of Staff, January 23, 2004.

Joe Hallgarten and Paul Maltby, IPPR (England), June 24, 2002.

Chriss Hamnett, Kings College London, June 19, 2002.

Evan Harris, MP, June 26, 2002.

Grace Healey, Massachusetts Association of Developmental Disabilities Providers (ADDP), October 2, 2003.

Talmadge Heflin, Chair of Texas House Appropriations Committee, February 10, 2004 (phone interview).

Michael Howard, Conservative Party Leader and former Home Secretary, February 10, 2003.

Dr. Ira Iscoe (Texas), January 23, 2004.

Jennifer James, Head of Task Force on Work Force and Adult Education, Massachusetts Governor's Office, 16 April, 2002.

David Joannides, Director of Dorset Social Services and Head of the Committee for Mental Health for the Association of Directors of Social Service, February 4, 2003 (phone interview).

Julie Johnson, Massachusetts Teachers Association, October 29, 2003.

Lynne Jones, MP, February 13, 2003.

Kathleen Kelley, President of Massachusetts Federation of Teachers, November 3, 2003.

Kristie Kimbell, Mental Health Policy Analyst (Texas), February 20, 2004 (phone interview).

Martin Knapp, London School of Economics, February 6, 2003.

Pete Laney, former Texas House Speaker, February 4, 2004 (phone interview).

Simon Lawton-Smith and Gil Hitchon, MACA (England), February 10, 2003.

Geoff Laybourne, Contracts and Competition Group, Her Majesty's Prisons Service May 2, 2003 (phone interview).

Julian Le Grand, Social Policy Department, London School of Economics, July 5, 2002 (phone interview).

Brian Lees, Massachusetts State Senator, December 8, 2003.

Alison Liebling, Institute of Criminology, University of Cambridge, February 7, 2003 (phone interview).

Rachel Lissauer, IPPR (England), June 21, 2002.

Shawni Littlehale, Pioneer Institute (Massachusetts), May 14, 2003.

Jose Llanes, University of Texas Pan American, December 17, 2003 (phone interview).

Joe Lovelace, Political Consultant, Texas Alliance for the Mentally Ill, January 13, 2004.

Sampson Lowe, "Positively Public" Unison (union-England), February 13, 2003.

Tim Loughton, MP, Conservative mental health Spokesperson, March 3rd, 2003 (phone interview).

Jennifer Lowenberg, Advocacy and Training Specialist, National Alliance for the Mentally Ill, Wisconsin, 16 November 2004 (phone interview).

David Magnani, Massachusetts State Senator, Vice Chairperson of the Education Committee, May 15, 2003.

Ed Malloy, Social sSrvice Chapter President, SEIU local 509, January 8, 2003.

Mike Maples, Texas Department of Mental Health and Mental Retardation, January 15, 2004.

Jim McDermott, CEO of Tarrant County Community Mental Health and Mental Retardation Center (Texas), May 11, 2004 (phone interview).

Chuck McDonald, Political Consultant and Lobbyist (Texas), December 19, 2003 (phone interview).

Neil McIntosh, Chief Executive of CfBT (England), January 30, 2003 (phone interview).

Alex McKenna, Amicus (union-England), July 1, 2002.

Gerry McKimmey, Texas Department of Mental Health and Mental Retardation, January 27, 2004 (Correspondence).

Curtis Meadows, LBJ School of Public Policy, University of Texas, October 10, 2003 (phone interview).

James Michel, former Director of Mental Health and Substance Abuse in Massachusetts Division of Medical Aid, October 21, 2003.

Mike Moses, Dallas ISD Superintendent and former Commissioner of Texas Education Agency, January 21, 2004 (phone interview).

Lawrence Moulin, Deputy Branch Head of Policy and Performance, Department of Health Mental Health Group (England), February 4, 2003.

Stella Mullins and Mary Ellen Nudd, Mental Health Association of Texas, January 19, 2004.

James Nauls, Texas Department of Criminal Justice, February 5, 2004 (phone interview).

Jim Nelson, former Commissioner of Texas Education Agency, December 15, 2003 (phone interview).

Kit Nichols, Senior Policy Manager, Pioneer Institute (Massachusetts), May 9, 2003.

Tim O'Leary, Massachusetts Association of Mental Health, October 1, 2004 (Phone interview).

Patsy O'Neill, Executive Director of Charter School of Texas Resource Center, January 5, 2004 (phone interview).

John O'Sullivan, Texas Federation of Teachers (treasurer), January 14, 2004.

Nathan Oley, National Coordinator for "Faithworks" (England), July 4, 2002.

Steve Owen, Public Office Director for Corrections Corporation of America, April 9, 2004 (phone interview).

Marc Pacheco, Massachusetts State Senator, March 18, 2004 (phone interview).

Marie Parente, Massachusetts State Representative, March 18, 2003.

Chris Patterson and Byron Schlomach, Texas Public Policy Foundation, January 14, 2004.

Brian Pearce and Harriet Crabtree, Director and Deputy Director of the Inter Faith Network (England), January 29, 2003.

Steve Perla, Parental Alliance for Catholic Education (Massachusetts), March 30, 2004.

Paul Peterson, Department of Political Science, Harvard, April 9, 2003.

Helga Pile, GMB (union-England), February 7, 2003.

Madsen Pirie, President of Adam Smith Institute, June 17, 2002.

Cliff Prior, Director of Rethink (England), January 30, 2003.

Joyce Quin, MP and former Minister responsible for prisons, February 12, 2003.

Thomas Rapone, former Massachusetts Secretary of Safety and Correction Commissioner, April 9, 2004 (phone interview).

David Rayner, Head of Community Participation Branch in the Inner City Religious Council, in the Deputy PM's Office, February 4, 2003.

Paul Reville, Cofounder of the Massachusetts Business Alliance for Education, September 24, 2003.

Clay Robinson, Reporter for the *Houston Chronicle*, December 18, 2003 (phone interview).

Marion Roe, MP, June 21, 2002.

Anne Rogers, Institute of Health Sciences, University of Manchester, February 3, 2003 (phone interview).

Martin Rogers, the Education Network/ Local Government Information Unit (England), February 11, 2003.

Mark Roosevelt, former Chair of Massachusetts House Education Committee, Democratic Gubernatorial Candidate (Massachusetts 1994). September 30, 2003.

Stanley Rosenberg, Massachusetts State Senator, January 14, 2003.

Marguerite Rosenthal, School of Social Work, Salem State College, November 21 2004 (phone interview).

David Rowland, Researcher in the Health Policy and Health Services Research Unit, University College London, June 28, 2002.

Marilyn Segal, Director of Citizens for Public Schools (Massachusetts), October 19, 2004.

Michael Sentence, former Legislative Director and Education Undersecretary for Governor Weld (Massachusetts), April 16, 2004.

Laurie Shanblum, Senior Director Corrections Corporation of America, February 20, 2004 (phone interview).

Eliot Shapleigh, Texas State Senator, February 4, 2004 (phone interview).

Sandy Skelton, CEO of the Texas Council of Community Mental Health and Mental Retardation Centers, February 2, 2004 (phone interview).

David Skidmore, Board of Social Responsibility Church of England, February 6, 2003.

Don Souriano, Chief of Staff for Massachusetts State Senator Susan Fargo, November 4, 2003.

Richard Taylor, MP, July 4, 2002.

Janet Theakston, Principal Officer National Union of Teachers (England), July 4, 2002.

Craig Tounget, Executive Director of Texas PTA, December 23, 2003 (phone interview).

Perry Trilling, Massachusetts Department of Mental Health, Assistant Commissioner for Administration and Finance, April 24, 2003.

Andrew Turner, MP, February 5, 2003.

Anne Umana, former Director of Tri-City Mental Health and Mental Retardation Center, November 11, 2003.

David Warner, LBJ School of Public Policy, University of Texas, March 11, 2003 (phone interview).

Doe Wieman, Mental Health Policy Analyst (Massachusetts), January 9, 2003.

Phillip Willis, MP and Liberal Democrat Spokesperson on Education, May 6, 2003 (phone interview).

Steve Wilson, Head of Governor Weld's Strategic Policy Team (Massachusetts), founder of Advantage Schools, October 6, 2003.

Keith Wood, Head of the National Secular Society (England), July 3, 2002 (phone interview).

Stewart Wood, the Treasury, July 2, 2002.

Disa Young and Sally Taber, Independent Healthcare Association (England), February 10, 2003.

Dan Zimmerman, Wisconsin Department of Health and Family Services, November 16, 2004 (phone interview).

Appendix B: List of Routine Interview Questions

1. Personal professional/political history.
2. What was your own (or your organization's) involvement with privatization? How, if at all, did you influence the process?
3. What is your view on privatization?
4. When did the first privatization efforts in field X take place?
5. Was privatization controversial? How does it compare to other policies?
6. Whose idea was it to privatize?
7. Who supported privatization? Why did they support privatization in your opinion?
8. Who opposed privatization? Why did they oppose privatization in your opinion?
9. Did any of the following groups/organizations/factors play a role in the privatization process? If so, what role did they play? If not, why not?
 - a. Private entrepreneurs, private lobbies.
 - b. Unions and professional organizations.
 - c. Advocacy groups.
 - d. Bureaucrats/ civil servants.

- e. Think tanks and/or policy experts.
- f. The media.
- g. General public opinion.
- h. Legal factors.
- i. Service recipients.
- j. Economic/budgetary factors.

10. Why do you think the privatization effort succeeded/failed?
11. What is the extent of privatization currently? What was it like in the past?
12. Is privatization a partisan issue?
13. How has experience with privatization changed the policy process, if at all? Is there a difference in actors' behavior and/or participation in the process today compared to the early goings?
14. Would you say that privatization is more or less acceptable today than it was in the past?
15. Why do you think there is extensive privatization in some programs and much less privatization in others?
16. How do you see the future of privatization in field X?

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